THE LEGAL PHILOSOPHY OF AL-GHAZĀLĪ: LAW, LANGUAGE AND THEOLOGY IN AL-MUSTAṢFĀ

A thesis presented by

Ebrahim E. I. Moosa

to

The Department of Religious Studies

in partial fulfilment of the requirements

for the degree of

Doctor of Philosophy

in the subject of

Religious Studies

University of Cape Town

Rondebosch, Western Cape

March 1995/Shawwāl 1415

DEDICATION

In the Name of Allah, the Most Gracious, the Dispenser of Grace.

To my parents, Ishāq and Ḥūrī, and all my teachers.

ABSTRACT

Abū Ḥāmid al-Ghazālī is a major figure in Muslim thought and famous for his writings on theology and mysticism. Al-Ghazālī's first career was that of a jurist and he had made major contributions to the jurisprudence of the Shafi'ī school. As time goes on his juristic contributions are increasingly being relegated to a secondary level.

This thesis attempts to place one of al-Ghazālī's last writings on legal theory (*uṣūl al-fiqh*), *al-Mustaṣfā*, in perspective and evaluate its significance in the genre of *uṣūl al-fiqh* literature. The focus of this thesis is the interface between law, language and theology as it manifests itself in a 'close reading' of *al-Mustaṣfā* and his biography as a jurist.

Al-Ghazālī's legal theory was very much shaped by his personal biography, intellectual, political and social contexts, which in turn were constituted by the language of theology and law. The controversies centered around the use of philosophical theology and "foreign knowledge" in the discourse of religion. Al-Ghazālī attempted to negotiate the tension-ridden ideological chasms between traditionalist and rationalist tendencies by fusing and synthesising the disparate intellectual disciplines. The battlefield for these ideological conflicts was the discipline of legal theory and law. In his role as synthesiser of disciplines, a *bricoleur*, al-Ghazālī often ended up vacillating between binary opposites, and was caught between stability and instability, order and disorder. Despite his attempts to stabilise language by means of a metaphysics, it was the semiotic nature of language that continuously destabilised his juridical and theological discourses.

ACKNOWLEDGEMENTS

It is a pleasure to acknowledge the many people and institutions that have made a contribution to this thesis.

Firstly, I owe a debt to all those of my teachers who introduced me to the joys of learning. Debts to first-teachers are impossible to discharge. At the risk of omission, I must mention Mawlānā Yūsuf Karaan, an excellent story-teller and first-teacher who inspired me to explore the world of Islam as a child, as well as Mr Adam Peerbhai in my early teens. To the late Shaykh Abū Bakr Najaar, I owe a great deal for sharing with me his vast knowledge and experience. His unexpected death left many of us the poorer. Most of all, I miss the memorable discussions and debates I could have with him, even though at times we would vehemently disagree. At the seminary of Deoband the dedication of two excellent teachers and conversation partners, Mawlānā Badr al-Ḥasan al-Qāsimī and Mawlānā ʿAbd al-Khāliq Madrasī steered me in the direction of critical thinking and reflection. To the Nadwatul ʿUlamā' for showing me the diversity of discourses in Islamic thought. Professor Fatḥī ʿUthmān served as a role model in many of my early intellectual choices, both as an employer in London and discussion partner.

The comradely solidarity and friendship of dozens of people in the Muslim Youth Movement of South Africa can never be adequately acknowledged. ʿAbd al-Rashīd ʿUmar, a close friend and associate for more than a decade has been an unflinching bastion of support even in the most trying times.

One learns a great deal from former students and associates for their critical appraisal that re-cast some of my own mis-apprehended ideas. For this I would be amiss if I do not mention Saʿdiya Shaikh, Soraya Bosch, Gary Wilson and Aslam Fataar for their contributions to my own thinking.

My thanks to Muḥammad ʿAlī Moosagie for generously making available his excellent library and for listening to some of my ideas, even though for the most of times our conversations appeared to be heated debates. Muḥammad Saʿīd 'M S' Kagie has over the years been a staunch and intimate friend. Without the dedicated assistance of the extra pair of eyes of my friend and bookseller Abdul Aleem Somers I would have been deprived of great treasures of knowledge. Shamiel Jeppie has been an intellectual soul-mate for more than a decade and remains a source of inspiration and committed friendship. Farid Esack has been a childhood friend who has been a pillar of strength and encouragement in

times of great adversity. To all these friends, and others not mentioned, I owe a debt that can hardly be repaid and thanks is insufficient a term.

The University of Chicago awarded me their South African Fellowship during 1990-91 which gave me access to their excellent resources. The Centre for Middle Eastern Studies, particularly, its director Professor John Woods, did not allow me to feel like a stranger for a single day. I deeply appreciate his generosity and that of his colleagues, Professors Rashīd Khālidī and Wadād al-Ḳāḍī who gave freely of their valuable time. Some lasting friendships were made during my brief stay in Chicago with Marda Dunsky, Jefferson Gray, Annie Campbell Higgins and Muḥammad Fāḍil. I would also like to thank the Islamic Academy of South Africa for their support during my years as a graduate student and their on-going support for the promotion of the discipline of Islamic Studies in this country. Mr Sulayman 'Solly' Ghoor and Mr Akhtar Thokan deserve special mention.

My colleagues in the Department of Religious Studies at the University of Cape Town were particularly considerate in letting me pursue my doctoral research. Associate Professor Charles 'Chuck' Wanamaker was determined to see this thesis through during his term as head of department and creatively facilitated teaching relief for me.

Dr Abdul Kader I. Tayob, my supervisor and colleague, deserves an award for his patience and gentle motivation. No student could hope to have a more careful and attentive thesis supervisor than him. I have profited enormously from his friendship, erudition and counsel over the years, and especially, while writing this thesis. As one of his first doctoral students, I can only pray: *allāhumma iftaḥ laka bi al-khayr*.

Last, but not least, is my gratitude to my family, parents, brothers, sisters, uncles, aunts, in-laws and the extended family network, for their steadfast support for my intellectual and social endeavours over the years. Even if they disagreed, they never lost faith in what I was doing. I am indebted to my eldest uncle, Muhammad I. Moosa who has not only been a pillar of strength to me but whose care and advice I deeply appreciate. To my wife Fahimoenisa, for her silent support and for assuming some of my responsibilities during my long absences from home, I owe a great deal. To Lamyā (7), who regularly monitored my progress, and Shiblī (3) who had to suffer the deprivations of my attention, there will hopefully be more time, now that the "pieces" (Shiblī's perhaps not incorrect construction of thesis) is out of the way.

TABLE OF CONTENTS

Abstract iii

Acknowledgements iv

Table of Contents vi

Title Abbreviations and Transliteration ix

Introduction 1

Chapter One
The Absent 'Text': Al-Ghazālī the Jurist 7
Introduction 7
The Role of the Jurist in the Saljūq Era 9
Early life and Family History 10
Education 12
The Beginning of a Career 14
al-Ghazali the Theologian (*Mutakallim*) and the Saljūq Era 18
al-Ghazali the Ideologue 21
al-Ghazali the Jurist (*Faqīh*) 23
Key Role of al-Ghazali in the Genealogy of Shafi'ī Jurisprudence (Diagram) 25a
Remembering the Dramatic 26
Reading the (Auto)Biography: Three Events 28
The Self 28
Memory and Writing 30
Exodus from Baghdad 32
Conclusion 36

Chapter Two
The Text and Context of *Uṣūl*: The Background of the Battle between Traditionalism and Rationalism 38
Introduction 38
The Relationship Between Law And Theology: From the Formative *madīna* to the Classical *dawla* 39
The Interdependence of Law And Theology 42
Tracing the Genealogy 46
Typology of Legal Theory 52
Conclusion 58

Chapter Three
Jurisprudence as Gardening: Theo(r)logising the Jurist's Empire Through Masks and Metaphors 61
Introduction 61
Ambiguous Wording and 'The Quintessence' 62
Theology and Law in al-Ghazālī 64
Theology and Law in al-Mustaṣfā 68
Designing 'Roots' (*Uṣūl*): Structure of *Usul* 74
Structure of 'Roots' (*Uṣūl*) in *al-Mustaṣfa* 75
Logic and Legal Theory 77
The Four Axes (*Aqṭāb*) 79

Structure as Ideology: The Aesthetic Ideology 81
Conclusion 85

Chapter Four
Language and the Rhetoric of Ambivalence 87
Introduction 87
Legal Theory as Discourse and Rhetoric 90
Language and Determination 93
The Language of Law: From al-Shafi'ī to al-Ghazālī 96
The Structuring of Language in *al-Mustaṣfā* 102
Linguistic Topoi 103
On the origins of language: Linguistic determinism 103
Original positing and uses of language 108
Distinguishing between lexical, religious and legal terms 110
Completely signifying speech (*'al-kalām al-mufīd'*): The hermeneutical field 113
Explicit Denotation: *Naṣṣ* 115
Hermeneutics: *Ta'wīl* 118
Grammatology of *Lugha* 124
Conclusion 128

Chapter Five
Meaning and the Metaphysics of Presence 131
Introduction 131
Contextual Semes: *Qarīna* 132
Metaphor: (*Haqīqa*) Literal and (*Majāz*) Figurative Expressions 134
Perspicuous Declaration (*Bayān*): Indeterminate (*Mujmal*) and
Determinate (*Mubayyan*) 137
Method of Understanding the Intention of Discourse (*Khiṭāb*) 142
Psycho-linguistics: Inner Speech (*Kalām al-nafs*) 143
Law and Writing 147
Conclusion 150

Chapter Six
The Dialogics of the Determinant (*Ḥukm*) and Discourse (*Khiṭāb*):
The Poetics of Goodness, Detestability and Liability 152
Introduction 152
On *Ḥukm* and *Khiṭāb*: Determination and Discourse 154
Khiṭāb as Speech Event 164
Jakobson's Framework for Speech Events (Diagram) 164a
Legal Theory as Speech Event (Diagram) 165a
Goodness and Detestability 167
On the Discourse of Liability 171
Rebuttal of al-Ash'arī's Doctrine of "Liability Beyond One's Capacity" 176
Conclusion 181

Chapter Seven
The Jurist Working in the Public Interest 183
Introduction 183
Independent Juristic Discretion (*Ijtihād*) 183
The Validity of Juristic Discretion (*Ijtihād*): One or Many? 190
Between Indicants and Signs: Language and the Relativity of Juristic Discretion 194
The Doctrine of Public Interest (*Maṣlaha*) 197
al-Ghazālī on *Maṣlaha* 200
Typology of *Maṣlaha* 202
Analogy and *Maṣlaha* 206
Applications of *Maṣlaha*: Illustrations 209

Killing a Human Shield 209
Human Shield at a Fort 212
Emergency at Sea 212
Amputating a Gangrenous Hand 212
Torturing a Suspect 213
Executing a Repentant Heretic (*Zindīq*) 213
Executing an Agitator 214
Taxation 215
Discretionary Punishment for Consumption of Wine 215
Conclusion 217

Conclusion 221

Bibliography 226

TITLE ABBREVIATION AND TRANSLITERATION

Mu for *al-Mustaṣfā* of Abū Ḥāmid al-Ghazālī
followed by volume and page number e.g., *Mu*, 1:3

ء	ʾ	ظ	ẓ
ب	b	ع	ʿ
ت	t	غ	gh
ث	th	ف	f
ج	j	ق	q
ح	ḥ	ك	k
خ	kh	ل	l
د	d	م	m
ذ	dh	ن	n
ر	r	و	w
ز	z	ه	h
س	s	ى	y
ش	sh	ة	-at in construct form
ص	ṣ	ا or ٰى	ā
ض	ḍ	و	ū
ط	ṭ	ى	ī

Introduction

But if all justice begins with speech, all speech is not just.

Derrida, *Writing and Difference*

Those familiar with the struggles of modern Muslim societies in their bid to come to terms with change know very well the formidable challenges the discipline of legal theory (*uṣūl al-fiqh*) in particular, and law in general, poses to contemporary Muslim scholarship. Our knowledge of the complex history of legal theory, the evolution of the discipline and its sub-themes is still in its infancy. This thesis was undertaken in order to understand some of the issues that make Muslim legal theory what it is and in knowing that, to be in a position to suggest how it has evolved and what it could become. I feel the best way of understanding the legal ethos of Islam is through an understanding of the lawmakers and jurists, for it is my belief that biography is strongly linked to productivity. This led me to the choice of al-Ghazālī as the subject of my thesis.[1]

Abū Ḥāmid Muḥammad b. Muḥammad al-Ghazālī (450-504/1058-1111) occupies a celebrated status in the history of Muslim intellectual history. He was renowned to be instrumental in a major paradigm shift in Islamic thought in the sixth/twelfth century. His magnum opus, *Iḥya' ᶜUlūm al-Dīn* (*The Revival of the Sciences of Religion*) remains a masterpiece of ethico-moral and spiritual reflections on religious thought and practice. Al-Ghazālī is also remembered as a champion of theology who attacked the Muslim philosophers for their views which conflicted with

---

[1]There is considerable debate whether the *nisba* is al-Ghazzālī, or al-Ghazālī. Al-Zabīdī citing several sources says that the *nisba* is al-Ghazzālī. In line with the use of several modern scholars I have opted for al-Ghazālī. Tāj al-Dīn al-Subkī, *Ṭabaqāt al-Shāfiᶜiyya al-Kubrā*, ed. Maḥmūd Muḥammad al-Tanāḥī and ᶜAbd al-Fattāḥ Muḥammad al-Ḥulwu (Cairo: Dar Iḥya' al-Kutub al-ᶜArabiyya, n.d.), 6:191; al-Sayyid Muḥammad b. Muḥammad al-Ḥusaynī al-Zabīdī, *Itḥāf Sādāt al-Muttaqīn* (n.p., n.d.), 1:18.

theological dogmas. His views on Islamic mysticism (*taṣawwuf*) are as thought-provoking today as they were 900 years ago, and mystics throughout the ages have venerated his memory. It takes little persuasion for even the most cursory reader of his biography to admit that al-Ghazālī - a man of complexity and enigma - has become an institution in himself.

My choice of al-Ghazālī was partly prompted by the intriguing question as to why he is rated less as a jurist in the intellectual legacy of Islam, considering his valuable contribution to the discipline. Somehow it seems his contributions to theology, philosophy and mysticism have overshadowed his juristic persona. Al-Ghazālī was a phenomenal figure. In my view he was an intellectual who wrestled with the social realities of his time. In his writings he certainly comes across as what Levi-Strauss would call a bricoleur, a craftsman who had his hand on all things.[2] Al-Ghazālī was a man of many talents who cultivated a range of intellectual and practical interests. In pursuit of some of these interests he crossed several boundaries and made several shifts, not all of which earned him praise.

An aspect which aroused my curiosity was that having started his career as a jurist, and after several personal crises, he closed his prolific career by writing his penultimate work on legal theory. This clearly suggested that he considered it an important discipline. In addition to that, I was inquisitive as to whether al-Ghazālī had made any special contribution to the discipline of legal theory, or whether his lack of renown as a jurist stemmed simply from the fact that he had not really been a leading light in the field.

---

[2]Jacques Derrida, *Of Grammatology*, trans. and author of translator's preface, Gayatri Chakravorty Spivak (Baltimore: The Johns Hopkins University Press, 1976), xix.

The prolific output by scholars in Ghazalian studies makes any new essay on this daunting figure an intimidating prospect. This study attempts to develop some insights in al-Ghazālī's treatment of legal theory with the primary focus on his last meditation on this subject - *al-Mustaṣfā min ᶜIlm al-Uṣūl (The Quintessence from the Discipline of Principles)*. Commenting on the merit of *al-Mustaṣfā*, the late Egyptian jurist, Muḥammad Abū Zahra said:

> For in this book he [al-Ghazālī] provided an excellent explanation of the issues of the science of legal theory, exploring all its dimensions and pursuing all its aspects. And in this book al-Ghazālī the philosopher and jurist truly emerges.[3]

This thesis intends to examine legal theory in terms of al-Ghazālī's semiotics, his philosophy of signs. The general approach is to understand the interrelations of law, theology and politics against referent systems of value. Such studies of Islamic legal theory are of recent origin, and in the discipline of Islamic studies in general, a nascent theme. Even if al-Ghazālī were well understood, and there existed a general agreement as to what he meant by his legal semiotics, this would still be a risky venture. Indeed, the proverbial nerve for failure must in any case be attendant.

The methods I have used in this thesis are adaptations from the work of post-structuralist and post-modern writers. I am fully aware that both approaches are the subject of considerable debate in modern academia. Nevertheless, I have undertaken some 'close-readings' of the Ghazalian text. In Islamic studies some pioneering work using the theories of postmodernism and deconstruction has been done, but this genre of writing is still viewed as an adolescent newcomer upsetting the established

---

[3]Muḥammad Abū Zahra, "al-Ghazālī al-Faqīh," in *Abū Ḥāmid al-Ghazālī fī al-Dhikrā al-Mi'awiyya al-Tāsiᶜa li Milādihī*, ed. Zakī Najīb Maḥfūz (Cairo: al-Majlis al-Aᶜlā li Riᶜāyat al-Funūn wa al-Ādāb wa al-ᶜUlūm al-Ijtimāᶜiyya, 1962), 571.

orthodoxies.[4] Islamic law is perhaps one of those fields of study most resistant to newer methodological inquiries. And yet, law is the most frequently employed discipline in Muslim societies and provides the main ideological platform of contemporary Islamic revival.[5] On a daily basis the legal and ethical vocabulary of Islamic law is being incorporated, re-defined and re-interpreted into our common discourse for presentation to a more universal jury with fascinating and sometimes unpredictable consequences.

The challenges and anxieties are obvious. Innovation in method received stoic resistance in the past, as it does in the present. One of al-Ghazālī's commentators, al-Sayyid Muḥammad al-Zabīdī (d. 1205/1790), came to his defence on the issue of theoretical and methodological innovation. Al-Zabīdī said:

> I have rarely seen an adherent of a method failing to condemn the method he chose to ignore and in which he could not see benefit.[6]

Should I succeed in this attempt, then one has introduced for further inquiry the strong possibility that politics, economics, culture and legal system(s) are not only more dynamic formations than they are normally credited with, but also a "motion-picture" universe that is continually becoming, infinitely developing and changing in response to genuinely novel elements.[7]

---

[4]See Michael M. J. Fischer and Mehdi Abedi, *Debating Muslims: Cultural Dialogues in Postmodernity and Tradition* (Madison: University of Wisconsin Press, 1990); Richard C. Martin, "Islamic Textuality in Light of Poststructuralist Criticism," in *A Way Prepared: Essays on Islamic Culture in Honor of Richard Bayly Winder*, ed. Farhad Kazemi and R.D. McChesney (New York: New York University Press, 1988).

[5]See Chibli Mallat, *The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shi'i International* (London: Cambridge University Press, 1993).

[6]al-Zabīdī, *Itḥāf*, 1:29 says:*"wa qallama ra'aytu sālika ṭarīqin illa wa yastaqbiḥu al-ṭarīq allatī lam yaslukhā wa lam yuftaḥ ʿalayhi min qibalihā."*

[7]I borrow this insight and phrase from Roberta Kevelson, *The Law as a System of Signs* (New

As matter of course, then, this focuses on the issue of language. Wittgenstein's view of language as a form of life, a mode of being which is breaking away from the atomistic picture of language and meaning and moving towards a more contextual one, is now popularly accepted. In this sense, the contemporary Muslim jurist and legal theorist is more a translator than an innovator. The Javanese actually have a word to describe the phenomenon of adapting an old language to suit the present - *jarwa dhosok*.[8] It was Alton Becker who pointed out that one universal aspect of cultural life is the keeping alive of old texts.[9] In doing so, language is given a life which is at once old and new. This dialogical aspect of past-present in the study of the law and legal texts places it in patterns of what has been and will be, patterns that are themselves compositions.[10] 'The law," in the words of Boyd White, " is thus at its heart an interpretive and compositional - and in this sense a radically literary - activity."[11] As we make the move from an atomistic appreciation of language to a contextual one, new questions arise just as older ones lose force. One addresses the silences, and waits for a sign!

When we read al-Ghazālī within the context of the world he inhabited, we may be able to relate aspects of his legal theory to his environment. Al-Ghazālī's world was characterized by transitions of a political, cultural and more importantly, an intellectual nature. With the emergence of the Saljūqs (1055-1141), the Abbassid caliphate experienced divisive theological and legal schisms. The challenges of new knowledge

---

York & London: Plenum Press, 1988), vii.

[8]Alton L. Becker, "Biography of a Sentence: A Burmese Proverb," in *Text, Play and Story: The Constitution and reconstruction of Self and Society*, ed. Edward M. Bruner (Prospect Heights, Illinois: Waveland Press, 1984), 135.

[9]Ibid.

[10]James Boyd White, *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago: University of Chicago Press, 1990), 91.

[11]Ibid.

inherited from the surrounding cultures made their impact in earnest; and al-Ghazālī tried to create a space and a role for himself in that environment. Restless and independent, he was prepared to leap the boundaries of intellectual disciplines, by reading both philosophy (*falsafa*) and philosophical theology (*kalām*), practising as a jurist (*faqīh*), advising those in power as a counsellor and ideologue, and engaging in mysticism (*taṣawwuf*). Some of these disciplines were supposed to be contained within hermetically sealed borders, but al-Ghazālī constantly trespassed by relating them to each other. His interventions in legal theory wove a range of ideas into the fabric of the law. Some of those threads were controversial, such as theology, logic, and aspects of language, which constantly undermined the rigidity of those intellectual forces that wished to secure the closure of the Islamic canon. In a bid to reform, intervene, construct and reconstruct, al-Ghazālī oscillated between order and chaos, stability and instability, and the conventions that forbid and permit. It appears as if the need to transgress was an important dimension of al-Ghazālī's intellectual makeup.

The chapters of this thesis explore and expose al-Ghazālī's complex legal philosophy. The first chapter gives a brief sketch of his formative years and particularly outlines his role as a jurist which has been overshadowed by other dimensions of his persona. The second examines the general role and preponderance of theology in legal theory in general, while the third tests the extent of theological influence in *al-Mustaṣfā*. The fourth and fifth chapters are crucial to the thesis as it uncovers the centrality of language in al-Ghazālī's legal theory. In the light of this chapters six and seven follow *al-Mustaṣfā's* approach to some key issues of Islamic legal theory. Six examines the semiotic relationship between the determinant (*ḥukm*), discourse (*khiṭāb*) and liability (*taklīf*), and seven explores the semiotics of independent thinking and creative juristic discretion (*ijtihād*), and public interest (*maṣlaḥa*). The conclusion follows.

Chapter 1

The Absent 'Text': Al-Ghazālī the Jurist

Introduction

Abū Ḥāmid al-Ghazālī was a prolific and brilliant writer, whose reputation as a jurist was recognised by his fiercest critics. Even his opponents among the scholars of the Maghrib, in particular Abū ᶜAbd Allāh al-Māzarī (d. 536/1141), acknowledged his prowess as a jurist as being superior to his forays in theology (*kalām*) and philosophy (*falsafa*)[1]. Recently, some of his earlier works on positive law (*fiqh*) and legal theory (*uṣūl al-fiqh*) have attracted academic attention. His hitherto unpublished works on jurisprudence are now being edited for publication[2].

It seems surprising that al-Ghazālī's juristic career and writings have been largely neglected if not ignored by his biographers. Ernst Kris, a pioneer in the psycho-social evaluation of biographies maintains that "biography is an institution."[3]

---

[1]al-Subkī, *Tabaqāt*, 6:241.

[2]See the publication of a new version of Abū Ḥāmid al-Ghazālī, *al-Mankhūl min Taᶜlīqāt al-Uṣūl*, ed. Muḥammad Ḥasan Ḥaytu (Damascus: Dār al-Fikr, 1400/1980); al-Ghazālī, *al-Wasīṭ fī al-Madhhab*, ed. ᶜAlī Muḥyī al-Dīn ᶜAlī al-Qurra Dāghī (n.p.: Dār al-Naṣr li al-Tibāᶜat al-Islāmiyya, 1404/1984); also see Aḥmad Zakī Manṣūr Ḥammād, "Abū Ḥāmid al-Ghazālī's juristic doctrine in *al-Mustaṣfā min ᶜilm al-uṣūl* with a translation of volume one of the *al-Mustaṣfā min ᶜilm al-uṣūl*" (Ph.D. diss., University of Chicago, 1987). According to Hallaq, Niẓām Yaᶜqūbī had edited al-Ghazālī's *fatāwā* (*responsa*) which may soon be in print. (See Wael B. Hallaq, "From Fatwas to Furuᶜ: Growth and Change in Islamic Substantive Law," *Islamic Law and Society*, 1, no. 1 (April 1994): 36 n.41.

[3]Ernst Kris, "The Image of the Artist: A Psychological Study of the Role of Tradition in Ancient Biographies," in *Psychoanalytic Explorations in Art* (New York: International Universities Press, 1952), 52.

By this he means the biography has a social function.[4] Biographies in general constitute an 'intricate interweaving of mythic, paradigmatic and historical elements." All of these elements are present in al-Ghazālī's biographies, and viewed holistically, they constitute the 'institution' that Kris believes forms a separate literary category.

This chapter will focus on the early life of al-Ghazālī and the factors which contributed to the evolution of his juristic career. The intention is to show that it was primarily his success as a jurist that made his extraordinary achievements in other fields of religious thought possible. Makdisi says:

> The insistence on law in the education of the scholar was important because it was the visible way of determining his orthodoxy. After this he could go into all sorts of subjects to satisfy his intellectual curiosity.[5]

It was the status that al-Ghazālī attained as a jurist that gave him the academic credibility and weight needed to transgress boundaries of intellectual disciplines and make extremely controversial contributions to such other disciplines as theology (*kalām*), Sufism (*taṣawwuf*) and philosophy (*falsafa*).[6]

---

[4]Frank E. Reynolds and Donald Capps, "Introduction," in *The Biographical Process: Studies in the History and Psychology of Religion*, ed. Frank E. Reynolds and Donald Capps (The Hague & Paris: Mouton, 1976), 28.

[5]George Makdisi, "Law and Traditionalism in the Institutions of Learning," in *Theology and Law in Islam*, ed. G. E. von Grunebaum (Wiesbaden, Otto Harrassowitz, 1971), 86.

[6]See [Abu Hamid] al-Ghazali, *Tahafut al-Falasifa* [*Incoherence of the Philosophers*], trans. Sabih Ahmad Kamali (Lahore: Pakistan Philosophical Congress, 1963); George F. Hourani, "The Dialogue Between al-Ghazali and the Philosophers on the Origin of the World," *Muslim World* 158 (July 1958).

The Role of the Jurist in the Saljuq Era

According to Lambton and Makdisi, the jurists (*fuqahā'*) in al-Ghazālī's era were part of an elite group, generally known by the term *ᶜulamā'*, (lit. learned ones).[7] While they primarily concentrated on religious affairs, there was no rigid separation between religion and politics. The *ᶜulamā'* of this time could have been academic professors of law, theologians, judges (*quḍāt*), and those who occupied the office of the jurisconsult (*muftī*). Our knowledge of the social history of the *ᶜulamā'*, which included jurists, theologians (*mutakallimūn*) and judges, in the post-formative period (third/ninth centuries) and earlier, is still in its infancy.[8] Nevertheless, Cohen's study of the economic background of Muslim jurisprudents in the classical period of Islam, which ended in the middle of the eleventh century/fifteenth century, showed that they derived from all strata of Muslim society.[9]

Lambton's study also shows that while many of the *ᶜulamā'*, especially the judges, were in the employ of the state, there were also some who had private sources of income and cherished their autonomy from the state. Many jurists found themselves in the unenviable position of being in the employ of the state, and could not display their disagreement with their political patrons in public.[10] Notwithstanding these

---

[7]Ann K. S. Lambton, *Continuity and Change in Medieval Persia: Aspects of Administrative, Economic and Social History, 11th-14th Century* (New York: Bibleotheca Persica, 1988), 297; Bertold Spuler, *The Muslim World: A Historical Survey: The Age of the Caliphs* trans. F.R.C. Bagley (Leiden: E. J. Brill, 1960), 82-90. Also see George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981).

[8]See Ann K. S. Lambton, "Aspects of Saljuq-Ghuzz Settlement in Persia," in *Papers on Islamic History:Islamic Civilisation 950-1150*, ed. D. S. Richards (Oxford: Bruno Cassirer, 1973), 105-107.

[9]Hayyim J. Cohen, "The Economic Background and the Secular Occupations of Muslim Jurisprudents and Traditionalists in the Classical Period of Islam (until the middle of the eleventh century)," *Journal of the Economic and Social History of the Orient* 13, (1970): 16-61.

[10]Lambton, *Continuity and Change*, 311-327.

restrictions, they played a vital role in shaping their societies through the practice of an important profession. In conjunction with other offices of the state, they were responsible for the execution and elaboration of the law. In fact, the *ʿulamāʾ* continued

> ... to perform various functions which were necessary for the continuation of the life of the community and to act as notaries for their Muslim brethren.[11]

They also played a vital role in the successive state formations during the Abbassid reign in the fifth/eleventh and sixth/twelfth centuries. One can safely assert that during the post-formative period of Islam, the jurist played a very seminal social and political role, none more so than al-Ghazālī, who was himself an academic jurist. Thus, his first career was to provide a solid foundation for his later forays into the realms of Islamic theology and mysticism. Indeed, it was the cornerstone of his multi-faceted life.

Early life and family history

Al-Ghazālī was born at Ṭūs in Khurasān, near the modern Mashhad, in 450/1058-9. Some reports maintain that he may have been born in Ghazālā, a nearby village. Ṭūs was a provincial city of Khurasān in the third/tenth century and also a district in itself.[12] The city was conquered during the reign of the third caliph ʿUthmān b. ʿAffān (d. 36/656). The historian, Yaqūt al-Ḥamawī (d. 681/1282) observed that it was reputed for its Islamic architecture and beautiful gardens. Several prominent scholars and persons of influence hailed from Ṭūs, including al-Ghazālī's longstanding patron, Ḥasan b. ʿAlī (d. 485/1092), who held the title of Niẓām al-Mulk, the influential *wazīr* or chief minister to two Saljūq sultans.[13] The close relationship al-

---

[11]Lambton, *Continuity and Change*, 320.

[12]M. Streck, "Mashhad," in *Encyclopaedia of Islam*, 2d ed.

[13] A. J. Wensinck and J. H. Kramers, "al-Ghazzālī" in *Handworterbuch des Islam* (Leiden: E. J. Brill, 1941), 140-44.

Ghazālī enjoyed with Niẓām al-Mulk may well have been as a result of their common origins.

The district of Ṭūs was said to comprise more than 1000 villages. Some accounts say Ṭūs comprised of two major towns, al-Ṭābarān and Ṭūfān, and in some instances that a second part, reputed to have been called Nuqān, is mentioned. It was partly due to the fact that Ṭūs was both a city and a district, that the misconception that it was a 'double' town became current among later Arab geographers.[14] After it had been destroyed in 791/1389, Ṭūs re-emerged as Mashhad in northern Iran. The Abbassid caliph Hārūn al-Rashīd (d. 193/809), and the eighth Shi'ī Imām ʿAlī b. Mūsa al-Riḍā (d. 203/818) were buried there.[15] Al-Ghazālī was also buried in Ṭūs.

Not much is known of al-Ghazālī's father. Al-Subkī says that he was fond of the company of the devout and the learned, and prayed that God provide him with sons who would serve the faith. Although his father dièd when al-Ghazālī was relatively young, he seems to have had a telling influence on his son's life, for in the moral economy of al-Ghazālī's biography, there are definite indications of a subliminal *pater incertus*. His father's will stated that his two sons be educated from the proceeds of his estate. For this purpose they were placed in the custody of an unknown pious elder of Tus, known for his tendencies toward mysticism (*taṣawwuf*). When the income from the estate was depleted, the al-Ghazālī children were forced to attend a boarding school where they were educated and fed.

---

[14]Streck, "Mashhad."

[15]Adib Nayif Diyab, "al-Ghazālī," in *Religion, Learning and Science in the Abbassid Period*, ed. M. J. L Young, J. D. Latham and R. B. Serjeant (Cambridge: Cambridge University Press, 1990), 425.

There are no extant historical records on al-Ghazālī's mother. While some sources say that she lived long enough to see her son's rise to fame, others say that she died while al-Ghazālī was still very young.[16] The latter view seems to be more feasible, and possibly explains why the al-Ghazālī children were placed in foster-care, for it is unlikely that they would have been reared by strangers, had their mother been alive.

Al-Ghazālī had three daughters who survived him. Their details are unknown, and we only have the name of one, Sitt al-Munā.[17] A son, called Ḥāmid, who died in his youth, is the reason why al-Ghazālī is called Abū Ḥāmid, the father of Ḥāmid.

Education

One of the earliest teachers with whom al-Ghazālī studied in Ṭūs was Aḥmad b. Muḥammad al-Radhakānī. Before he reached the age of 20 he went to Jurjān. Recent research has put paid to the popular belief that while he was there, al-Ghazālī studied with Abū Naṣr al-Ismāʿīlī (d. 405/1014). According to modern biographical treatises, Abū Naṣr died 45 years prior to al-Ghazālī's birth. The modern scholar, ʿAbd al-Karīm al-Yāfī has now identified al-Ghazālī's teacher as being the scholar and jurist, Abū al-Qāsim Ismāʿīl b. Misʿada al-Ismāʿīlī (d. 477/1084), also known as Ibn Saʿda.[18] The

---

[16]Sulayman Dunya says that al-Ghazālī's mother lived to see her son's fame, see his *al-Ḥaqīqa fī Nazar al-Ghazālī* (Cairo: Dār al-Maʿārif, 1965), 18-19. ʿAbd al-Dā'im Abū al-ʿAtā al-Baqrī al-Anṣārī says that she died when he was very young, *Iʿtirāfāt al-Ghazālī: Kayfa Arrakha al-Ghazālī Nafsahu* (Cairo: Maktaba al-Angelo al-Miṣriyya, 1975), 3.

[17]Shams al-Dīn Muḥammad b. Aḥmad b. ʿUthmān al-Dhahabī, *Siyar Aʿlām al-Nubalā'*, ed. Shuʿayb al-Arna'ūṭ (Beirut: Mu'assasah al-Risāla, 1405/1984), 19:326; al-Subkī, *Ṭabaqāt*, n. 6:192. Al-Fayūmī says the one daughter's name was Sitt al-Nisā'.

[18]ʿAbd al-Karīm al-Yāfī, "Sīrat al-Imām Abī Ḥāmid al-Ghazālī wa Makānatuhu," *al-Turāth al-ʿArabī*, no. 22 (Jamād al-Ūlā 1406/January 1986) : 11. This is also confirmed by Aḥmad Shams al-Dīn in his "Muqaddima" to volume of 7 of al-Ghazālī's collected works, *Mujmūʿa Rasā'il al-Imām al-Ghazālī*, ed. Aḥmad Shams al-Dīn (Beirut: Dār al-Kutub al-ʿIlmiyya, 1988/1409), 5; ʿĀrif Tāmir (*al-*

most interesting aspect of Abū al-Qasim's tutelage is the fact that he was a member of the Ismā'īlī Shī'a, a sect which al-Ghazālī was to oppose vigorously later in his career.

After studying the religious and linguistic disciplines in Ṭūs and Jurjān, he went to the Naysabūr Nizāmiyya college with some other students from Ṭūs. Here he studied more advanced disciplines of positive law (*fiqh*), theology, logic and philosophy under the celebrated teacher, Imām al-Ḥaramayn ʿAbd al-Malik b. ʿAbd Allāh al-Juwaynī (d. 478/1085). While at Naysabūr he also studied with Abū ʿAlī al-Farmadhī (d. 477/1084-5).[19] Al-Ghazālī's brilliance rapidly gained renown and his powers of speculative thought were regarded unsurpassed.[20]

Al-Ghazālī's genius has been chronicled from an early age. While still a student of al-Juwaynī, he broke a hallowed convention of the time by writing a book called, *al-Mankhūl min Taʿliqāt al-Uṣūl* (*The Sifted from Notes on Principles*).[21] During the classical period of Islam, it was an unwritten rule that one did not write a work during the lifetime of one's teacher, or while still under tutelage. In what appears to have been a moment of supreme irritation at al-Ghazālī's impertinence, al-Juwaynī is said to have remarked: "You buried me while I am alive, could you not wait until I was dead"?[22] Al-Juwaynī's statement could be interpreted as admiration for his student's intellectual achievement, but was more likely a scathing reproach for his audacity.

(*al-Ghazālī Bayna al-Falsafa wa al-Dīn* (London: Riad el-Rayyes Books, 1987), 41, identifies this teacher as Ibn Saʿda, and not Ibn Misʿada as al-Yāfī and Aḥmad Shams al-Dīn report.

[19]al-Dhahabī, *Siyar*, 18:565.

[20]Abū al-Faraj ʿAbd al-Raḥmān Ibn al-Jawzī, *al-Muntaẓam fī Taʾrīkh al-Mulūk wa al-Umam* (Beirut: Dār Ṣādir, n.d), 9:168-70.

[21]Abu al-ʿAbbās Shams al-Dīn Aḥmad b. Muḥammad b. Abī Bakr b. Khallikān, *Wafayāt al-Aʿyān wa Anbāʾ Abnāʾ al-Zamān*, ed. Iḥsān ʿAbbās (Beirut: Dār Ṣādir, n.d.), 4:217-21. Abū Ḥāmid Muḥammad b. Muḥammad al-Ghazālī, *al-Mankhūl min Taʿliqāt al-uṣūl*.

[22]Ibn al-Jawzī, *al-Muntaẓam*, 9:169.

Most biographers have recorded anecdotes of the tension that existed between the young al-Ghazālī and his mentor al-Juwaynī, especially the latter's envy.[23] While most of these accounts can be classified as being hagiographical, aimed at boosting al-Ghazālī's status, they can also be subjected to more rigorous scrutiny to uncover the strained relationship between al-Ghazālī and his renowned teacher. In addition to the fact that they show that al-Ghazālī was prepared to break conventions from an early age, they also shed light on the psycho-social relationships between students and teachers during the period.

There were two other students of al-Juwaynī with whom al-Ghazālī competed regularly. They were Abū al-Ḥasan ʿAlī b. Muḥammad b. ʿAlī al-Ṭabarī, better known as Ilkiyā al-Harāsī (d. 504/1110) and Aḥmad b. Muḥammad al-Muzaffar al-Khawwāfī (d. 500/1106). Al-Juwaynī is reported to have remarked: "al-Ghazālī is a brimful ocean; Ilkiyā a lion ready to leap, and al-Khawwāfī an incinerating fire."[24] He also said that "research is the strength of al-Khawwāfī, conjecture belongs to al-Ghazālī, and eloquence to Ilkiyā al-Harāsī."[25]

The Beginning of a Career

Historical sources are not clear what al-Ghazālī did between 478/1085 and 484/1091. While some biographers say that he remained at the Naysabūr Niẓāmiyya, others say that he joined the retinue of scholars and theologians which accompanied the chief minister, Niẓām al-Mulk. Perhaps he did both. What is known with certainty is that, in 484/1091, Niẓām al-Mulk appointed him as professor of Shafiʿī law at the Baghdad Niẓāmiyya college. With this appointment, al-Ghazālī's intellectual excellence was recognised. During this period he wrote some of his most influential

[23]al-Yāfiʿī, "Sirāt al-Imām," 12.

[24]al-Subkī, *Ṭabaqāt*, 6:196.

[25]al-Subkī, *Ṭabaqāt*, 6:202.

work on theology and the refutation of the philosophers which contributed to his popularity.

This period of teaching was to be short-lived, lasting only four years. In 488/1095, while he was in Baghdād, a nervous breakdown and a personal spiritual crisis caused him to vacate his teaching post. A number of events combined to precipitate his departure from Baghdād. Just a year prior to his resignation, al-Ghazālī enjoyed public exposure when he administered the oath of office to the newly acceded Abbassid caliph, al-Mustaẓhir.[26] It is likely that al-Ghazālī was exposed to political threats through his connection with al-Mustaẓhir, who along with other dignitaries of Baghdād, had supported Tutūsh (d. 488/1095) in his claim to the sultanate. Tutūsh, however, was defeated by the Saljūq Barkyārūq (d. 498/1105). McDonald postulates that al-Ghazālī must have had serious fears because of his relationship with the royal palace, for he surrendered his professorship and left Baghdād. Added weight is given to this theory by the fact that al-Ghazālī only resumed public teaching after the death of Barkyārūq.[27]

Others believe that he fled Baghdād in 488/1095 to escape the assassin's dagger.[28] Prior to his exodus from Baghdād, there had been a spate of politically motivated killings. First, the chief minister, Niẓām al-Mulk was assassinated in 485/1092, followed by Sulṭān Malikshah who was allegedly poisoned in the same year.[29] These assassinations were closely followed by that of the new chief minister, Tāj

---

[26]F.R.C. Bagley, "Introduction" to *Ghazali's Book of Counsel for Kings*, trans. F.R.C. Bagley (London: Oxford University Press, 1971), xxiv.

[27]*Shorter Encyclopaedia of Islam*, 1974 ed., s.v. "al-Ghazzali."

[28]W. Montgomery Watt, "The Study of al-Gazālī," *Oriens* 13-14 (1961): 129, attributes this opinion to Farid Jabre.

[29]M. Th. Houtsma, "The Death of Niẓām al-Mulk and its Consequences," in *Journal of Indian History* 3 no. 8 (September 1924): 156.

al-Mulk in 486/1093. Given his close ties to these notables at the Saljūq court, it is likely that al-Ghazālī may, at the very least, have feared for his life.

His early relationship with the Ismā'īlīs with whom he studied in Jurjān also bears examination at this point. The Nizārī Ismā'īlīs may have considered him a traitor for he gained entry into their closed circle when he was a student and then, not only did he abandon them, but actively opposed them.[30] The Saljūq regime and the Abbassid caliph of Baghdād were bitterly opposed to their Ismā'īlī Shī'ī adversaries. Al-Ghazālī's anti-Shī'ī polemics can be found consistently throughout his writings, but his most virulently anti-Ismā'īlī treatise, *al-Mustaẓhirī*, emanated from the time when he was in the caliph's service. Little wonder then that his flight to Damascus is also believed to have been precipitated by fear of Isma'īlī reprisals against him!

The best documented reason for his retirement from the Niẓāmiyya has been attributed to the deep spiritual crisis which he suffered at this time. He was plagued by intellectual self-doubt and viewed his teaching career as having been contaminated by impure and egotistic motives. This debilitating illness could also have been an hysterical paralysis which could have been related to hostile relationships with significant others in infancy and childhood, as studies in other contexts have shown.[31] As we know, al-Ghazālī was orphaned in early childhood. From the onset of that illness during adulthood, al-Ghazālī started to search for a more profound experience of the truth to substitute a deep psychological deprivation, which he ultimately found in mysticism.[32] While this psychological explanation may not altogether be incorrect, it does somehow suppress the effects of his political activities under the broad categories

---

[30]Tāmir, *Bayna al-Falsafa wa al-Dīn*, 43.

[31]Ganath Obeyesekere, *The Work of Culture* (Chicago: The University of Chicago Press, 1990), 14-15.

[32]Ibid., 17.

of moral incrimination and psychoanalysis. In fact, al-Ghazālī's exodus from Baghdād could have been as a result of some or all of these factors, social, political and personal.

Under the pretext of pilgrimage (*ḥajj*), al-Ghazālī left Baghdād for the spiritual centres of Damascus and Jerusalem. In Damascus, it is reported that he frequented the gatherings of the jurist, Naṣr b. Ibrāhīm al-Maqdisī (d. 490/1096), who is said to have had *ṣūfī* leanings. There is confusion about the other places to which he travelled during this time. It is known that he intended to meet the ruler of the Maghrib, Yūsuf b. Tāshfīn (d. 500/1107). Some believe he may have travelled as far as Alexandria before turning back.[33] However, when he learned of the latter's death, he abandoned his trip to that region. In any event, after an absence of between four to five years, he returned to Ṭūs in 493/1099-1100, where he completed the writing of the *Iḥyā' ʿUlūm al-Dīn*.

Around 499/1106 Niẓām al-Mulk's son, Fakhr al-Dīn ʿAlī, now the *wazīr* to Sanjar, persuaded al-Ghazālī to return to the Niẓāmiyya college in Naysābūr. In 500/1106, however, Fakhr al-Dīn was killed by an Ismāʿīlī adversary. It is not clear for how long after that al-Ghazālī remained in Naysābūr. Some believe he returned to Ṭūs after the death of the *wazīr*, while other sources suggest that he may have finally retired from official teaching around 503/1109-10. During this period, he spent most of his time in *ṣūfī* practices, writing and teaching a select group of students. It was between his second spell of official teaching and final retirement, that he completed the

[33]al-Subkī, *Ṭabaqāt*, 6:199; ʿAbd al-Raḥmān Badawī, *Muʾallafāt al-Ghazālī*, 2d ed., (Kuwait: Wakāla al-Maṭbūʿāt, 1977), 23, says that the reports that al-Ghazālī received news of Yūsuf b. Tāshfīn's death in Alexandria were implausible because it is known that in the year 500/1107 al-Ghazālī was back in Khurasān.

work on legal theory, *al-Mustaṣfā*, the central focus of this thesis.[34] On 14 Jamād al-Thānī 505 - 18 December 1111, not long after his withdrawal from public life, he died at the age of 53.

al-Ghazālī the Theologian (*Mutakallim*) and the Saljūq Era

In evaluating al-Ghazālī's role as a theologian, it is necessary to place him in the broader context of the religious and sectarian revival of his time. Makdisi correctly points out that the revival of the Sunnī theological tradition did not begin with the Saljūqs, nor the activities of Niẓām al-Mulk, for that matter.[35] Far from any significant revival, Niẓām al-Mulk assisted by al-Ghazālī, vigorously promoted the legal school of Shāfi'ī and only implicitly advanced the doctrinal tenets of Ash'arism. The received wisdom which hails al-Ghazālī as the champion of Ash'arism is questionable. Makdisi's study points out that at the time a traditionalist Sunnī revival was firmly in control which glorified the explicit words (*naṣṣ*) and held them to be sacred.[36] This trend was implicitly and sometimes explicitly pitted against the rationalising legal and theological schools in Islam. According to Makdisi:

> Ghazzālī's career in Baghdād was too late and too brief to have allowed him to do for Ash'arism what he is supposed to have done; namely establish it as the middle of the road orthodoxy. Ghazzālī could not have taught Ash'arism in the *madrasa* even if it had been possible. He was professor of Shāfi'ī law, and that is the subject he taught.... Outside of that traditional institution of learning, the *madrasa*, he pursued other subjects, including philosophy, queen of the "foreign sciences" or *'ilm al-awā'il*.[37]

---

[34]Bagley, *Counsel for Kings*, xxxvi.

[35]Makdisi, "The Sunnī Revival in Islamic Civilization," in *Islamic Civilization*, 155.

[36]Ibid.

[37]Makdisi, "Sunni Revival," 160.

Ash^{c}arism, therefore, could only have been propagated by infiltrating the sermon (*wa^{c}z*), and not through formal teaching (*tadrīs*).[38] Fierce sectarian competition prevented open proselytisation to theological schools.

The power structure of the Abbassid empire had undergone a major change just prior to al-Ghazālī's era. In 334/945 the Buwayhids - Daylamī Persians from the Ṭabaristān region - captured Baghdād. They remained in power for just over 100 years until 447/1055 when they were defeated by the Saljūqs, Turkish warriors from Central Asia. The Mu^{c}tazilites, along with the Shī^{c}ites, had supported the Buwayhid dynasty.[39] The fortunes of both the Mu^{c}tazilites and Shī^{c}ites waned when the Suljūqs came to power. From then onwards, the Saljūqs effectively limited the power of the Abbassid caliph in Baghdād.

Tughril Beg, the first of the great Saljūqs, was the first to order the public cursing of al-Ash^{c}arī from the pulpits of Khurasān where the worshippers were predominantly followers of the Shafi^{c}ī school. The key proponent of this anti-Shafi^{c}ī persecution, says al-Subkī, was the Mu^{c}tazilite ^{c}Amīd al-Mulk, Manṣūr b. Muḥammad al-Kunduri (d. 456/1064), the *waẓīr* of Tughril Beg.[40] He extracted permission from the sultan to take action against the heretics (*al-mubtadi^{c}a*), namely the philosophers and the Shī^{c}a. Al-Kunduri sought support from the Mu^{c}tazilites, who according to al-Subkī:

---

[38]Henri Laoust, "Les Agitations Religieuses A Baghdad aux IV^{e} et V^{e} siecles de l'hegire," in *Islamic Civilization*, 178.

[39]^{c}Umar Farrūkh, *Ta'rīkh al-Fikr al-^{c}Arabī ila Ayyām Ibn Khaldūn* (Beirut: Dār al-^{c}Ilm li al-Milayīn, 1983), 466.

[40]He had supported the unsuccessful claim to the throne of Alp Arsalan's brother Sulaymān and was put to death with the approval of Niẓām al-Mulk. Bagley, *Counsel for Kings*, n 1, xxxiii; al-Subki, *Ṭabaqāt*, 3:390.

> ... pretended to follow the school of Abū Ḥanīfa, whereas their hearts were saturated with the infamies of the Qadarites and only sought affiliation to the Ḥanafī school as a cover for themselves.[41]

However al-Kunduri's successor as *wazīr* was Niẓām al-Mulk, a loyal follower of the Ashʿarite creed and the Shafiʿī law school. His interventions to the influential Saljūq rulers, Tughril Beg (d. 455/1063) and Alp Arsalān (d. 465/1072) created an opportunity for Ashʿarites and moderate *ṣūfīs* to gradually strengthen their ties with the new and moderate section of the Saljūq rulers. Initially, Ashʿarism was tolerated, but later it flourished becoming an influential factor within those circles close to the state.[42]

The Niẓāmiyya colleges under the patronage of Niẓām al-Mulk, but particularly the one in Baghdād, were founded to oppose the two intellectual forces of Ḥanafism and Ḥanbalism.[43] Whether as true Ḥanafites or pretenders, Ḥanafism was a formidable force in Baghdād. Ḥanafism was also supported by the efforts of Abū Saʿd al-Mustawfī (d. 494/1101), who built a mausoleum over the grave of Abū Ḥanīfa around 459/1066, to which was attached a college (*madrasa*) for the propagation of Ḥanafī law. In the Abbassid capital of Baghdād, where al-Ghazālī found himself, fierce competition between Shafiʿī/Ashʿarī and Ḥanafī/Muʿtazilī schools was common. Both the Muʿtazilites and Ashʿarites represent different forms of rationalist discourse. It may even be reasonable to imply that there was a battle for intellectual space among partisans of *kalām* themselves. The discipline of theology (*ʿilm al-kalām*) was itself in crisis. Two forms of *kalām*, or rather two types of *kalām* with different political agendas were pitted against each other: Ashʿarite-*kalām* versus Muʿtazilite-*kalām*. At

---

[41]al-Subkī, *Ṭabaqāt*, 3:391; also see Muṣṭafā Jawād, "ʿAṣr al-Imām al-Ghazālī," *al-Turāth al-ʿArabī*, no.22 (1986): 109-119.

[42]al-Qurrah Daghī, "ʿAṣr al-Ghazālī," introduction to *al-Wasīṭ fī al-Madhhab*, 23-24.

[43]Laoust, "Les Agitations," 179.

source, both Ash^{c}arite and Mu^{c}tazilite-*kalām* were based on the rational defence of religion by way of speculative arguments.

However, the problem becomes more complex on further investigation. While the Mu^{c}tazilites and Ash^{c}arites, excoriated each other in bitter struggle, the Ḥanbalīs were quite content to act as spectators.[44] While the rationalist tradition was being torn by strife, the strength of Ḥanbalī thought went unchecked, leading to its eventual hegemony in Baghdād. In addition, it thrived on the influence and activism of *al-qāḍī* Abū Ya^{c}la (d. 458/1065) and later the nobleman (*sharīf*) Abū Ja^{c}far (d. 470/1077), a cousin of the Abbassid Caliph.[45] It was in this context that al-Ghazālī played his role as a theologian (*mutakallim*) by engaging in extensive debates and writings, not only against the Ismā^{c}īlis and the Mu^{c}tazilites, but also against the Ḥanbalīs and the Ḥanafī law school. He was to show contrition later in his life for his attacks on Abū Ḥanīfa, the founder of the Ḥanafī school. Al-Ghazālī also dedicated specific works, such as the *Qawā^{c}id al-Aqā'id* (Rules of Dogma) and the *al-Mustaẓhirī* to theological topics, which served the dual purpose of repudiating the views of his adversaries and establishing an acceptable theological doctrine.

al-Ghazālī the Ideologue

A large part of al-Ghazālī's career coincided with the political successes of the Saljūq sultans, especially the activities of the ambitious Niẓām al-Mulk. Al-Ghazālī was too much of a realist to regard the government of the Saljūqs as being truly Islamic.[46] He reformulated Muslim political and constitutional theory, thereby harmonising the relationship between the caliphs and the real controllers of power, the

---

[44]Muṣṭafā Jawād, "^{c}Aṣr al-Imām al-Ghazālī," *al-Turāth al-^{c}Arabī*, no. 22 (1986): 112.

[45]Ibid., 114.

[46]Lambton, "Aspects of Saljūq-Ghuzz Settlement," 106.

Saljūq sultans.[47] The old Persian adage that "religion and the monarchy are twins" was a political aphorism very much in currency at the time [48]. Against this background, the political in-fighting between various Saljūq potentates manifested itself in the tensions between Shafi'ī/Ash'arī factions and the Ḥanafī/Mu'tazilī groups. As a senior religious figure, al-Ghazālī could not insulate himself against some of these ideological feuds.

He was forced to become involved in matters of politics to the extent that he had to take sides in an internal political feud among the Saljūq rulers.[49] This involvement resulted in the work *Naṣīhat al-Mulūk* (*Counsel for Kings*), written in the genre of "mirrors for princes," written in the phase after his retirement from teaching in Naysābūr.[50] A point of interest here is that al-Ghazālī set aside a special chapter in this work, titled "Women and their Good and Bad Points." The essence of this chapter was that some of the wives of the Saljūq rulers, especially Turkān Khātūn, the wife of Malikshāh, played a key role in the clandestine intrigues of succession to the sultanate. Not only does the chapter provide an insight into al-Ghazālī's attitude towards women, but also the extent of his partisanship in the conflict. He felt so strongly about the matter, that he deemed it necessary to warn his contemporaries and future generations about the role of women in politics:

---

[47]Muḥammad Fatḥī al-Darīnī, "al-Fikr al-Siyāsī 'inda al-Ghazālī, wa al-Māwardī wa Ibn Khaldūn," *al-Turāth al-'Arabī*, no. 22, (1986): 23-67.

[48]al-Zabīdī, *Itḥāf*, 1: 152; Nabih Amīn Fāris, *The Book of Knowledge, being a translation with notes of the Kitāb al-'Ilm of al-Ghazzālī's Ihyā' 'Ulūm al-Dīn* (Lahore: Shaykh Muhammad Ashraf, 1970), 40.

[49]E. Ashtor, *A Social and Economic History of the Near East in the Middle Ages* (London: Collins, 1976), 210. Ashtor says: "There is good reason to believe that the great success of the Seldjukids were partly due to the favourable attitude or even active help of the sunni theologians and other staunch supporters of Moslem orthodoxy."

[50]Bagley, *Counsel for Kings*, xxxvi

> It is a fact that all the trials, misfortunes and woes which befall men come from women, and that few men get in the end what they long and hope from them ...[51]

Towards the end of his life al-Ghazālī wished to change his image of being a state ideologue, but by then he was too deeply immersed in the affairs of the Saljūqs. Although he was reluctant to teach in Naysābūr after his retirement, he was prevailed upon to do so by the *wazīr* Fakhr al-Mulk. Even at such a late stage, he wished in vain to distance himself from the patrons of power.

al-Ghazālī the Jurist (*Faqīh*)

The primary concern of this chapter is to ascertain why the accounts of al-Ghazālī's juristic career are so inadequate. There must be reasons why, his biographers have generally ignored this aspect of his life.[52] It could be that al-Ghazālī had ambitions of being more than just a jurist and saw himself as a grand religious reformer. In many respects he was ideally suited to multifaceted roles. He was familiar with Ṣūfism and had the added advantage of being an accomplished theologian. It is likely that the fame which grew from these talents overshadowed his equally distinguished, if not quite as visible, legal abilities. His mastery of the controversial disciplines of mysticism and theology could also be responsible for the marginalisation of his juristic talents. Al-Ghazālī, the controversial theologian and *ṣūfī*, features much more prominently in the biographical literature than does any other dimension of his life. Criticism against him also centered around these two areas. Ibn al-Jawzī, for instance, was vehement in denouncing al-Ghazālī's idiosyncratic views on asceticism, citing "... the reason for his deviation from the rectitude of proper

---

[51]Bagley, *Counsel for Kings*, 172.

[52]Exception to my generalisation is a work by Ḥusayn Amīn, *al-Ghazālī Faqīhan, wa Faylasūfan wa Mutaṣawwifan* (Baghdad, 1963).

understanding (*al-fiqh*)..." was "... because of his association with the *sūfīs*. He viewed their lifestyle as the goal."[53]

Nevertheless, al-Ghazālī's student Muḥammad b. Yaḥyā b. Manṣūr described him as the 'Second al-Shāfiʿī." [54] Ibn ʿAsākir praised al-Ghazālī as having been an "authority" in both the law (*fiqh*) of the Shafiʿī school (*madhhab*) and in comparative law (*kāna imāman fī al-fiqh madhhaban wa khilāfan*).[55] Al-Ghazālī was credited with the renewal of the Shafiʿī school of law (*jaddada al-madhhaba fī al-fiqh*).[56]

It is well known that al-Ghazālī was not a very accomplished traditionist (*muḥaddith*).[57] What he lacked in the discipline of tradition, he certainly made up for in

---

[53]Ibn al-Jawzī, *al-Muntaẓam*, 9:169.

[54]al-Subkī, *Ṭabaqāt*, 6:202; This student Muḥammad b. Yaḥya wrote a commentary on al-Ghazālī's *'al-Wasīṭ fī al- Furūʿ'* which he called *al-Muḥīṭ*, see Kātib Jalabī (Chelebi) (Ḥājī Khalīfa), *Kashf al-Ẓunūn ʿan Asāmī al-Kutub wa al-Funūn*, ed. Muḥammad Sharaf al-Dīn Yaltaqāyā (Wakālat al-Maʿārif al-Jalīla, 1360/1941), 2:633.

[55]al-Subki, *Ṭabaqāt*, 6:214; I have translated *khilāf* here as comparative law. The term *khilāf* is opposed to *madhhab*, where the latter refers to doctrines having the consensus of the school's doctors. *Khilāf* deals with the disputed questions of law, whether it is in one or several schools of law. Since *khilāf* is about comparing and disputing, the notion of comparative law is appropriate. George Makdisi, *The Rise of Colleges*, 109.

[56]Muḥammad al-Zuḥaylī, "al-Ghazālī al-Faqīh wa Kitābuhū al-Wajīz," *al-Turāth al-ʿArabī*, no. 22 (1986): 88; al-Subkī, *Ṭabaqāt*, 6:205, 214.

[57]Traditionists have accused al-Ghazālī of lacking proficiency in knowledge of *ḥadīth*, a deficiency which he seemed to have attempted to redress in the closing years of his life. Muḥammad b. Idrīs al-Shāfiʿī (d. 205/820) to whom al-Ghazālī is equated, was also poorly rated for his knowledge of *ḥadīth*, yet he became immortalised in the law school. A disciple of al-Shāfiʿī, Aḥmad b. Ḥanbal, said of his teacher: "He was the most discerning (*afqah*) of people when it came to comprehending the Book of God or the Tradition (*Sunna*) of His Prophet was concerned, but spent little time in search of Prophetic narrations (*ḥadīth*)." Muḥammad b. Ḥasan al-Ḥujawī al-Thaʿālabī al-Fāsī, *al-Fikr al-Sāmī fī Taʾrīkh al-fiqh al-Islāmī*, ed. ʿAbd al-ʿAzīz b. ʿAbd al-Fattāḥ al-Qārī, (Cairo: Maktaba Dār al-Turāth, 1397 AH), 1:395. Al-Shāfiʿī and al-Ghazālī may share more than what their biographers

the field of law. His contribution becomes evident when one examines the chronological catalogue of legal manuals used in the Shāfiʿī school. Al-Shāfiʿī (d. 204/820) wrote the *Kitāb al-Umm* which was abridged by his Egyptian student al-Muzanī (d. 264/878), as the *Mukhtaṣar al-Muzanī*. Nearly one and a half centuries later, in the eleventh century, al-Juwaynī (d. 478/1085) wrote a commentary on the *Mukhtaṣar al-Muzanī* called *Nihāyat al-Maṭlab fī Dirāyat al-Madhhab*. Al-Ghazālī abridged this work and called it the *al-Basīṭ*. From this work he culled three smaller abridgements, the *al-Wasīṭ*, the *al-Wajīz* and the *al-Khulāsa*. The genealogy of Shafite jurisprudence flowed from al-Shāfiʿī to al-Ghazālī. (See diagram.)

During the three centuries following his death, al-Ghazālī's works were undeniably pivotal in the development of the legal canon of the Shāfiʿī school. Much of the later developments were dependent on his writings and interpretations of the master texts of the Shāfiʿī school. Jurists would later use his works to extrapolate rulings for the school. The leading Shafite jurist, ʿAbd al-Karīm b. Muḥammad al-Qazwīnī al-Rāfiʿī (d. 623/1226) abridged al-Ghazālī's *al-Khulāsa* into a work called *al-Muḥarrar*.[58] Al-Rāfiʿī also produced a commentary on al-Ghazālī's *al-Wajīz*, called *Fatḥ al-ʿAzīz* (*Sharḥ al-Wajīz*).[59] The second most important figure after al-Rāfiʿī in the Shāfiʿī school was Yaḥyā b. Sharaf b. Murī al-Nawawī (d. 676/1278). It was he who abridged the *al-Muḥarrar* into the *Minhāj al-Ṭālibīn*, now an authoritative source for

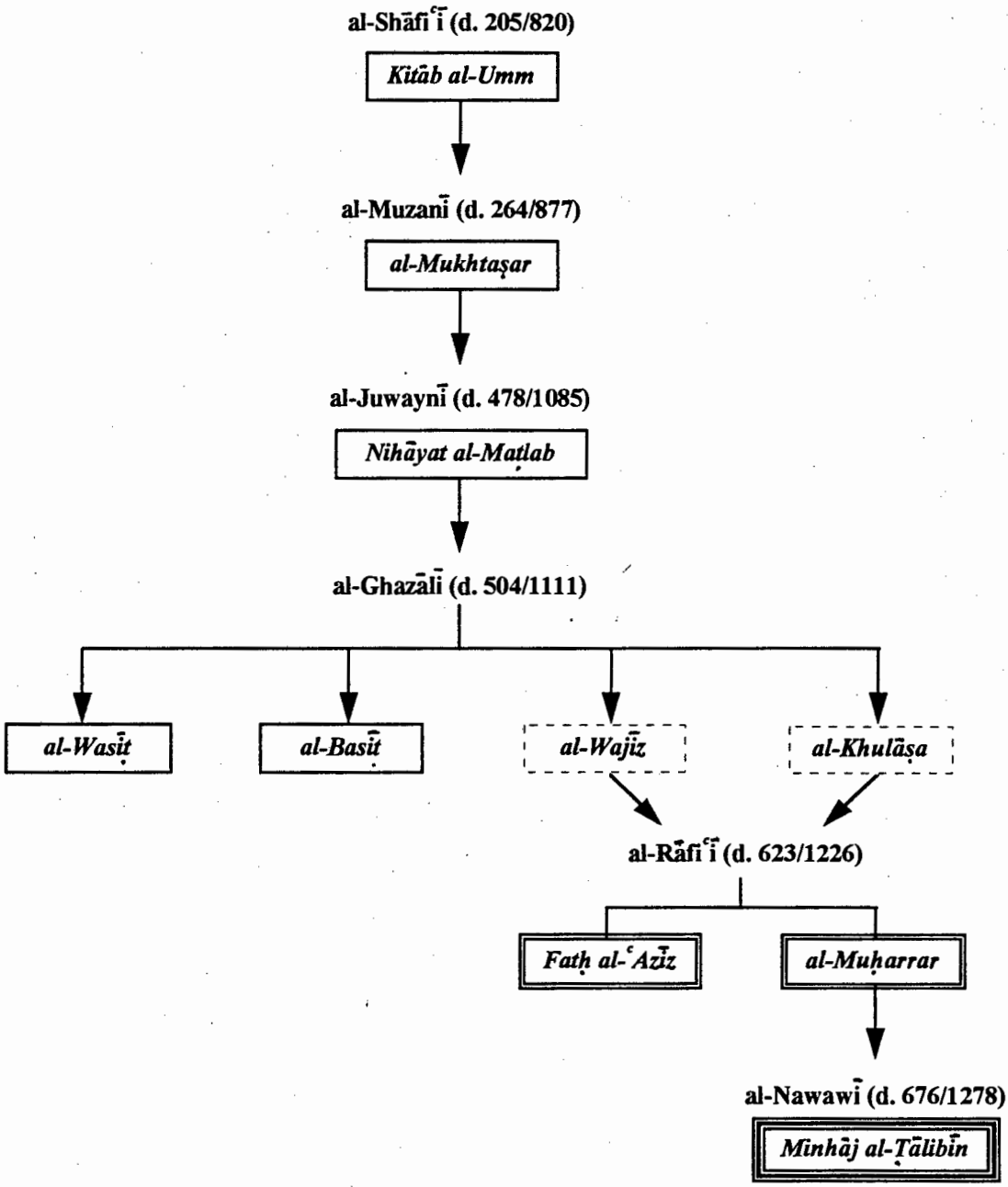
---

thought they had in common. But the significant point that this comparison raises is that at least in the twelfth century, knowledge of traditions as the main yardstick for measuring the intellectual excellence of a scholar had waned. Al-Ghazālī's indiscriminate use of unverified prophetic traditions (*aḥādīth*) also exposed him to criticism which indirectly affected his credibility as a jurist. Ibn al-Jawzī says that in the *Iḥyāʾ ʿUlūm al-Dīn*, al-Ghazālī wrote on the method of the *Ṣūfīs* and ignored the rule of *fiqh*, see Ibn al-Jawzī, *al-Muntaẓam*, 9:169.

[58]al-Zuḥaylī, "al-Ghazālī al-Faqīh," 85.

[59]Muḥammad b. Ḥasan al-Ḥujawi al-Thaʿālabī al-Fāsī, *al-Fikr al-Sāmī fī Taʾrīkh al-Fiqh al-Islāmī*, ed. ʿAbd al-ʿAzīz b. ʿAbd al-Fattāḥ al-Qārī (Cairo: Maktaba Dār al-Turāth, 1397 AH), 2:338.

Key Role of al-Ghazālī in the Genealogy of Shāfiᶜī Jurisprudence



juridical responsa (*fatāwā*) in Shāfiʿī jurisprudence.[60] Although several commentaries, glosses and notes have been written on the *Minhāj*, it must be kept in mind that al-Ghazālī was the key link in the transmission of the jurisprudential sources of the Shāfiʿī school between the fifth/eleventh and seventh/thirteenth centuries.[61] Even in legal theory (*uṣūl al-fiqh*), al-Ghazālī's *al-Mustaṣfā* ranks as third in the trio of works in this field. Only the *al-Muʿtamad* of Abū al-Ḥusayn al-Baṣrī (d. 413/1022) and the *Kitāb al-Burhān* of al-Juwaynī (d. 478/1085) preceded it in the hierarchy of such works.[62]

Remembering the Dramatic

If the empirical evidence supports al-Ghazālī's pedigree as a jurist par excellence, then there must be some explanation as to why he does not occupy that status in the tradition. I venture to suggest that the historical sources tended to focus on the controversial and dramatic, with the result that the ordinary events were underplayed, if not completely ignored. For the historian of religion an important issue is "to what extent ideal concepts such as those presented in a founder's biography shape subsequent life-tellings."[63] Kris attributes the transformation of the mythical into

---

[60]al-Zuḥaylī, "al-Ghazālī al-Faqīh," 85; al-Ḥujawī, *al-Fikr al-Sāmī*, 2:341, says the *al-Minhāj* is the abridgement of al-Rāfiʿī's *al-Rawḍa*.

[61]For the titles of some of the commentaries of *Minhāj al-Ṭālibīn* of al-Nawawī: *Sharḥ Minhāj al-Ṭālibīn* by Jalāl al-Dīn al-Maḥallī (d. 864/1459). *Ḥāshiya ʿalā Sharḥ al-Maḥallī ʿalā Minhāj al-Ṭālibīn* by Shihāb al-Dīn al-Qalyūbī. *Mughnī al-Muḥtāj* by al-Khaṭīb al-Shirbīnī (d. 994/1586). *Tuḥfat al-Muḥtāj* by Ibn Ḥajar al-Haytamī (d. 973/1565). *Ḥāshiya* by ʿAbd al-Ḥamīd al-Shirwānī. *Nihāyatu al-Muḥtāj li Sharḥ al-Minhāj* by al-Shihāb al-Ramlī (d. 1004/1596). *Ḥāshiya ʿalā Sharḥ al-Minhāj*, by Nūr al-Dīn al-Shabramallīsī (d. 1087/1677)

[62]Muḥammad Abū Zahra, "al-Ghazālī al-Faqīh,", 531.

[63]Marcia K. Hermansen, "Interdisciplinary Approaches to Islamic Biographical Materials," *Religion* 18 (1988) : 171; also see Richard W. Bulliet, "A Quantitative Approach to Medieval Muslim Biographical Dictionaries," in *Journal of the Economic and Social History of the Orient*, 13 (1970) : 195-211 passim.

factual as the 'biographical formulae."[64] By constantly repeating the same incident or events, a process is set into motion whereby the image of the subject is affected. Al-Ghazālī's biography has been made vulnerable to mythology by the inclusion of several such elements, in particular, the myths which surround his role as a theologian (*mutakallim*) and mystic (*mutaṣawwif*). These were controversial disciplines at the time and provided ample material for historical drama.

Several myths were circulated to legitimise al-Ghazālī's theological and mystically-inspired writings. 'Legitimizing-edifying-dreams" do not only play a crucial role in reinforcing these myths as Kinberg's study has shown but are also suggestive of a semiotic coding of information at more subtle levels.[65] 'Dreams that instruct people how to behave, think, or react to definite situations in their daily lives" are widely found throughout Islamic literature.[66] Various law schools (*madhāhib*) were also the subject of a range of such legitimizing dreams. Abū al-Ḥasan al-Ashᶜarī, for instance, left the Muᶜtazilite fold on the basis of a dream. Al-Ghazālī's theological and *ṣūfī* works were popularised by similar legitimizing dreams. Abū al-Qāsim Saᶜd b. ᶜAlī al-Isfara'inī for instance, saw the Prophet of Islām in a dream approving one of al-Ghazālī's theological texts, *Qawāᶜid al-Aqā'id*. Ibn Ḥirzam, an outspoken critic of al-Ghazālī's *Iḥya' ᶜUlūm al-Dīn*, dreamt that he was beaten on the command of the Prophet for criticising al-Ghazālī's book, and when he woke up, found the whip marks on his body. These events were dramatised in a bid to bolster al-Ghazālī's authority in the disciplines of theology and mysticism. Al-Ghazālī's biography thrives on his success as a *ṣūfī* and theologian and thus accounts for him being accorded the honorific *Ḥujjat al-Islam* (Authority of Islam). His legal contributions could not

---

[64]Kris, "The Image of the Artist," 65.

[65]Leah Kinberg, "The Legitimation of the Madhāhib through dreams," *Arabica* 32 (1985): 47-79 passim; Hermansen, "Interdisciplinary Approaches," 175.

[66]Kinberg, "The Legitimation of the Madhahib," 48.

possibly match such levels of drama and were thus reduced to the level of the ordinary in the historical memory.

Reading the (Auto)Biography: Three Events

When reading al-Ghazālī's autobiography and biographical accounts, some events impress more than others. An endeavor will be made to place three of these events into a particular theoretical framework so that they can amplify an overall assertion that authors, even of arcane legal theory, and their biographies cannot be entirely separated. These events or social dramas are the keys to understanding the ideas, feelings and emotions of the biographical subject. I suggest that three events epitomise the social dramas of al-Ghazālī's life, as evident from his autobiography and biographies. Historical precision may not always be appropriate and, indeed, not even possible as worldviews are not easily chronicled in the manner that political events are, but this in no way detracts from their reality from the viewpoint of the subject.[67] One way of examining the broad themes of biography is to see each human experience as a chain of *rites de passage* through varying stages of liminality, or the individual's social drama of pilgrimage. The three events described here symbolise recurring themes in al-Ghazālī's biography.

The Self

The first event took place in al-Ghazālī's childhood on the occasion when his tuition came to an abrupt halt due to a lack of funds. He was then advised to join a school (*madrasa*) in Ṭūs where he would receive free tuition and lodging facilities to become a jurist. During more reflective moods in later life, al-Ghazālī lamented the fact that his career as a jurist came about by coincidence, since his main goal to study

[67]See Robert Darnton, *The Great Cat Massacre and Other Episodes in French Cultural History* (New York: Vintage Books, 1984), 23.

was in order to survive. This event troubled al-Ghazālī to such an extent that it warranted a comment in his autobiography: "We sought knowledge for purposes other than God, but [knowledge] refused to be [harnessed] except for God" (*ṭalabnā al-ʿilma li ghayr allāh fa abā an yakūna illa lillāh*).[68] A strong sense of guilt is evident in these words, occasioned by the fact that the knowledge which was to bring him such acclaim had not been gained with noble and moral goals in sight. At that time in his life, he studied because it was expedient to do so, and because he was fed as well as educated at the *madrasa*. However, he did manage to come to terms with these feelings of guilt by viewing the issue deterministically and concluding that knowledge did not allow itself to be used in pursuit of a lesser goal.

Many of al-Ghazālī's biographers continue to be puzzled by this statement. Al-Anṣārī says that it is unclear whether he was commenting positively, or negatively.[69] I believe it symbolises al-Ghazālī's life-long battle with his self and his continuous struggle to celebrate the purity of motive, rectitude and moral order. His last words on his deathbed, which he had reiterated to his disciples on many occasions was "cultivate sincerity of motive" (*ʿalaykum bi al-ikhlāṣ*).[70] He was strongly aware that anything which might accrue from talent or influence was worthless if the greater good of a moral cause had not been served. This dilemma of faith and constant struggle to allow only purity of motive, generated al-Ghazālī's moral and ascetic-self, the *ṣūfī*. The statement that "knowledge refused to be [harnessed] except for God" is an overpowering indication of the degree to which he had enlightened himself. Overcoming the egotistical motive and turning the referent to God was, for him, of the utmost importance.

---

[68]al-Yāfī, "Sīrat al-Imām," 9; al-Subkī, *Ṭabaqāt*, 6:194.

[69]al-Anṣārī, I*ʿtirājāt*, 6.

[70]Ibn al-Jawzī, *al-Muntaẓam*, 9:170.

Memory and Writing

The next account recalls an episode when the young al-Ghazālī was returning from Jurjān where he had been studying and had taken notes (*taʿliqa*) from his Ismāʿīlī teacher in Jurjān. On his return to Ṭūs he was accosted by a group of vagrant robbers (*ʿayyarūn*) who relieved him of his possessions, including his notes. He pleaded with the thieves to return the notes which were his most prized possession, representing years of labour. He offered them all his goods except the notes, saying they would be of little benefit to them anyway. The leader of the band of the thieves derided him saying: 'How can you claim that you have knowledge, when we have taken it away from you. Now you have been stripped of its knowledge and left without knowledge (*ʿilm*)!'"[71] This event had a profound effect on al-Ghazālī. He firmly believed that God had used the robbers to convey to him the message that memory should be the prime instrument used to store knowledge.[72] Consequently, he memorized the notes during his three-year stay in Ṭūs. Viewed from a post-modernist perspective, al-Ghazālī would be faulted for his erroneous belief in memory as a 'treasure" and a 'presence".[73] After this incident al-Ghazālī disclaimed 'writing,' associating it with 'theft'. He asserted that writing can be possessed by thieves and taken away from one, leading to deprivation.

When reading the later works of al-Ghazālī like *al-Mustaṣfā*, it becomes evident that his attitude towards writing suffered a change. In a discussion about the conditions of juristic discretion (*ijtihād*), al-Ghazālī made several observations as to what constituted the proper qualification of a master-jurist (*mujtahid*). He then argued in favour of several concessions on these conditions all of which favoured writing

---

[71]al-Subkī, *Ṭabaqāt*, 6:195.

[72]Ibid.

[73]Paul de Man, *Blindness and Insight*, (New York: Oxford University Press, 1971), 114.

against memorisation.[74] For instance, he said, that one did not need to memorise the entire Qur'ān, the legal verses of the Qur'ān, *ḥadīth* statements dealing with law, or those cases of existing consensus and rules of grammar, in order to qualify as a master-jurist. It would suffice if one had sufficient knowledge and access to authorised copies of these source materials.

Here we have two positions of al-Ghazālī: the young al-Ghazālī returning from Jurjān and the *ṣūfī* retired at Ṭūs. There could be a number of explanations for this change in attitude towards writing, but I will offer one. Al-Ghazālī juxtaposes memory and speech in opposition to writing, just as he posits literal against metaphorical, nature against culture and positive against negative. Use of the superior term celebrates the *logos* whereas the use of the inferior term (e.g. the metaphorical instead of the literal) marks a linguistic fall. Hence, all analysis is strategically returned to its origins, located in voice and, by inference writing is degraded. By privileging memory over the written word, al-Ghazālī believes he would have direct knowledge through phonic speech. 'The unmediated presence of the self to its own voice, as opposed to the reflective distance that separates the self from the written word."[75] He identifies the spoken sound captured in memory with meaning (thought). This phonocentrism, is also characteristic of Muslim logocentrism, which treats writing as merely an external, supplementary addition to the written word. It is also a reference to an origin, a pure source of meaning where the knowledge of the notes originates, namely from his Ismāʿīlī peers in Jurjān. It traces the knowledge to a site, a point, be it language or authority, beyond which we need not go further. This is called a metaphysics of presence. Logocentrism and a metaphysics of presence are characterised by the irrepressible desire to have a transcendental signified which engenders a closed

[74]*Mu*, 2:350-54.

[75]Ibid.

linguistic and knowledge system.[76] I would identify this instance as an illustration of the crude logocentrism of the young al-Ghazālī.

The later and older al-Ghazālī is more experienced and enriched by his mystical experiences. In the mystical world the sign does not point to itself, but to another sign. Although there is a gravitation to the Sign, signifying God, the interrelation between signifier and signified is less rigid and referential. The mystical world places a greater emphasis on symbolism, instead of literalism. After this experience, al-Ghazālī has a different appreciation of writing and no longer associates it with theft. Contrary to his earlier stance, he does not require knowledge to be memorized. A written source is sufficient. He no longer privileges voice, but considers writing as another referent. While the written source may still be considered a source and site of originary meaning, the switch that al-Ghazālī makes from sound to writing opens the possibility of at least limiting logocentrism and the metaphysics of presence, and thereby opening the boundaries of a closed linguistic and knowledge system. The significance of these observations are that they indicate the shifts in al-Ghazālī's position. In addition, if one reads the two instances together it creates a certain sense of ambiguity and ambivalence as to the extent logocentrism inheres in his thought, or whether the mystical experiences had radically changed his perspective of knowledge, especially in law.

Exodus from Baghdad

Al-Ghazālī's exodus from Baghdād is a legend that also makes a significant autobiographical statement. In my opinion it is perhaps the most express statement of *rites de passage* within a ritual subject. Al-Ghazālī had undertaken a 'pilgrimage' which had serious personal and social consequences. Turner believes that in the major

[76]Derrida, *Of Grammatology*, 49.

historical religions, pilgrimage is the "functional equivalent" of partly a type of *rites de passage* and partly that of "rituals of affliction." [77] In preliterate small-scale societies, but also in cultures where pilgrimage systems are strongly developed, people often undertake a penitential journey to some shrine in order to cure illness or difficulties of body, mind or soul by miraculous power, or better morale.[78] Al-Ghazālī's long absence from Baghdād, I believe, was such a pilgrimage.

For while al-Ghazālī did undertake the obligatory pilgrimage (*ḥajj*) to Makka during this exodus, much of his reflections about his spiritual sojourn was in and around Damascus and Jerusalem, both sites of non-obligatory shrines of pilgrimage in Islām. Both were places of great spiritual traditions of the Jewish prophets and saintly figures revered by different forms of Islām. Al-Ghazālī said:

> I announced that I had resolved to leave for Mecca, all the while planning secretly to travel to Syria... Then I entered Damascus and resided there for nearly two years. My only occupation was spiritual exercise and combat with a view to devoting myself to the purification of my soul and the cultivation of virtues... Then I travelled from Damascus to Jerusalem, where I would go daily into the Dome of the Rock and shut myself in. Then I was inwardly moved by an urge to perform the duty of pilgrimage... So I travelled to the Ḥijāz.[79]

During this liminal phase, al-Ghazālī wrote his opus, the *Iḥyā' ʿUlūm al-Dīn*, which was hailed as a major reflective and sometimes unconventional religious writing. It was during this period that al-Ghazālī suspended the normal rules of religion, crossed

---

[77]Victor Turner, "Religious Paradigms and Political Action: The Murder in the Cathedral of Thomas Becket," in *The Biographical Process*, 157.

[78]Victor Turner, "Pilgrimages as Social Processes," in *Dramas, Fields and Metaphors: Symbolic Action in Human Society* (Ithaca: Cornell University Press, 1974), 166-230; also see Dario Zadra, "Victor Turner's Theory of Religion: Towards an Analysis of Symbolic Time," in *Anthropology and the Study of Religion*, ed. Robert L. Moore and Frank E. Reynolds (Chicago: Center for the Scientific Study of Religion, 1984), 84-93.

[79]Richard Joseph McCarthy, *Freedom and Fulfillment* (Boston: Twayne Publishers, 1980), 92-93.

boundaries and undertook new spiritual experiments. He was accused of engaging in antinomian practices that invited criticism from people like Ibn al-Jawzī (d. 597/1200) who chastised him for deviating from the rule of law (*tarak fīhī qanūn al-fiqh*).[80] Ibn al-Jawzī expressed his shock at al-Ghazalī who recommended spiritual devotees who wanted to surrender their accoutrements of prestige and status (*jah*) by means of spiritual exercises, to steal clothes from the public baths. He advised devotees to put on someone else's clothes and wear their own clothes on top of it. They should then walk away slowly giving the owners of the clothes enough time to detect that their clothes had been stolen. People will then accuse the person for being a 'public bath's thief' (*sāriq al-ḥammām*).[81] In this way the public humiliation suffered will break down the devotees' pride. Stealing from the baths, said Ibn al-Jawzī was nothing short of theft for which the offender was liable for amputation. Al-Ghazālī also suggested that devotees suffering of pride should do the menial task of meat-shopping. After having purchased the meat they should hang it around their necks in an act of self-humiliation. Ibn al-Jawzī deemed both these suggestions as being utterly detestable (*ghāyat al-qubḥ*).[82]

Al-Ghazālī's brief antinomian streak during his spiritual wandering reflects his fatigue with the profane life of an academic jurist. He refused to be called a jurist (*faqīh*) and described law (*fiqh*) "a mere science of this world."[83] As a ritual subject he detached himself from his previous social status. Through experiences of liminality, al-Ghazālī transformed himself into a *ṣūfī* with a newly defined position in society.

---

[80]Ibn al-Jawzī, *al-Muntaẓam*, 9:169; al-Dhahabī, *Siyar*, 19:342.

[81]Ibn al-Jawzī, *al-Muntaẓam*, 9:169.

[82]Ibid.

[83]Fazlur Rahman, "Law and Ethics in Islam," in *Ethics in Islam*, Ninth Giorgio Levi Della Vida Biennial Conference, ed. Richard G. Hovannisian (Malibu: Undena Publications, 1985), 4.

ᶜAbd al-Ghāfir, our main informant about the once fiery, arrogant and polemical jurist-theologian, observed the changes he saw in al-Ghazālī:

> I visited him several times. I watched him, remembering how he use to conduct himself in bygone days with maliciousness, looking down upon people with contempt, making light of their [views] in arrogance and haughtiness, boasting his extensive natural gifts of thought, eloquence and mind, only seeking glory and status. Now he was just the opposite of all that. He was cleansed of that detritus. At first I thought all this was a contrived and deliberately cultivated, in order to show off what he had become. But after a long observation and examination of the man, my doubts were proven wrong. The man had really recovered from his earlier delusion.[84]

The gradual and ambivalent changes and stages in al-Ghazālī's life were evident. He had completed his pilgrimage by arriving at the destination of *taṣawwuf*. While it is not clear who al-Ghazālī's spiritual mentor was after al-Farmadhī, he does seem to have enthusiastically read the works of early *ṣūfīs* such as Ḥārith al-Muḥāsibī (d. 243/857) and Abū al-Qāsim al-Qushayrī (d. 465/1072). When he returned to Ṭūs, he cultivated a community of followers who were sympathetic to a reformed vision of Islām in which *taṣawwuf* was an important ingredient. So while al-Ghazālī clearly remained within the juridical tradition of Islām, he did nuance the nature of Islamic practices towards the ideals of *taṣawwuf*. Thus we see him contributing to a tendency within Islām which combined law (*sharīᶜa*) and mysticism (*ṭarīqa*).

If one treats al-Ghazālī's exodus as an event then it symbolizes his capacity to transgress, break out of boundaries and embrace innovations. Surely, intellectual innovations were not new to al-Ghazālī, but during the exodus, which marked a very critical stage of his life, he was prepared to transgress and test the limits of strict religious laws and experiment with spiritual practices that raised the ire of his peers.

---

[84]al-Dhahabī, *Siyar*, 19:324.

Conclusion

The abiding interest of scholarship in al-Ghazālī is precisely because of his fascinating life experience and biography. They bear testimony to his complex personality and extraordinary influence in Muslim thought.

As we enter late modernity or post-modernity, there is a growing number of questions that interrogates the legal project in modern Islam. It particularly questions the relationship between law, ethics and the social context, with a view to understanding the role and status of law in modern Muslim societies. By looking at one major figure like al-Ghazālī we see that the life of the jurist and the life of law cannot be separated. To the contrary, they flow into each other. In examining al-Ghazālī, we observe that more than just the training of the jurist impacts on his work. His psyche, life-experience and personal proclivities subtly, and at times overtly, determine his meta-theory of law or legal theory (*uṣūl al-fiqh*). I have tentatively tried to put the selected fragments of al-Ghazālī's biography into focussed conversation with his juristic self.

One notices several dimensions of al-Ghazālī's personality. The theologian in him is constantly engaged in larger ideological battles with adversaries. As a state ideologue for the Saljūqs and the Abbassids, he was bound to be caught up in the crossover of political feuds. At times he became deeply involved in these battles whilst declaring his repugnance for politics. His role as a *ṣūfī* brings temporary relief, but little distance between himself and his political peers. Nevertheless, as an ideologue he did make some interventions in reformulating the existing constitutional relationships between the caliph and the powerful sultans.

His fame as a theologian and *ṣūfī* seems to have dramatised and sensationalised his role and function in the Islamic legacy, thus limiting posterity's access to, and

inquiry about his contributions as both jurist (*faqīh*) and theoretician of law (*uṣūlī*). Given the controversy that he generated in theology and mysticism, it may be plausible that the Shāfi'ī law school to which he claimed affiliation may have been keen to remember him as a theologian, but not very enthusiastic about promoting him as a jurist. Al-Ghazālī has been immortalised by his work on moral theology, the *Iḥyā'*, but his contributions to law immortalised the Shāfi'ī scholars like al-Rāfi'ī and al-Nawawī.

The biography symbolically discloses dimensions that may give us greater insight into al-Ghazālī. He confesses to his lifelong personal battle against egotism and arrogance, culminating in his relentless search for rectitude and moral order. The biography also shows that al-Ghazālī can be unsure of himself and vacillate between polar positions. At the same time he can also be goal-oriented and may even be prepared to transgress the limits and boundaries prescribed for him, if such an expedient action may serve a greater good. His biography shows that he is often prepared to work within contradictions and conflicts which lends a fascinating dimension to his work.

Chapter 2

The Text and Context of Uṣūl: The Background of the Battle between Traditionalism and Rationalism

Introduction

Hodgson maintains that the closing years of the period 334/945 to 504/1111, which he has called the early middle period, can be characterised as an era of maturity and dialogue among the intellectual traditions of Islām.[1] The crowning glory of this period was the newfound tolerance between the *shar'īa*-minded *'ulamā'* on the one hand, and the esoteric *ṣūfīs* and philosophers on the other. If anything, al-Ghazālī personified this era in his intellectual development - as jurist, *ṣūfī* and theologian-philosopher. His critique of philosophy notwithstanding, al-Ghazālī did adopt philosophical techniques and methods in the elaboration of law and theology. For once, some of the bigotry of *shar'ī*-mindedness was relatively blunted by the esotericism of Sufism and philosophy which ushered in a culture of tolerance and maturity.

> At best, the ground was laid for a full and varied intellectual and spiritual development with the blessing of Islam ... With the establishment of the international Islamicate social order, however, there had come into being new ways of ensuring unity and even the discipline of Muslim society.[2]

In the assessment of this period one would be remiss in not including al-Ghazālī among those who pioneered the forging of this unity. Al-Ghazālī must be acknowledged for his role in the intellectual synthesis of the disciplines of dialectical

---

[1]Marshall G. S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization*, vol. 2, *The Expansion of Islam in the Middle Ages* (Chicago: University of Chicago Press, 1977), 152-154, 192.

[2]Ibid., 192.

theology, philosophy, Sufism and law. Not only was his critique of philosophical thought in general in the *Tahāfut al-Falāsifa (The Incoherence of The Philosophers)* a creative and innovative project but it also legitimated those aspects of philosophy that did not conflict with religion.

This period can also be characterised as one of action and reaction as the forces of traditionalism and rationalism pitted themselves against each other. The issue at stake was the degree to which rationalism could be used to explain the disciplines of law and theology, and to what extent these disciplines could be allowed to interface. The traditionalists, of course, abhorred the very mention of philosophical/dialectical theology (*kalām*) and clashed vigorously with the rationalists. The source of this conflict and the outcome thereof will be examined in this chapter. It therefore becomes crucial to investigate how al-Ghazālī, especially as a legal theorist, navigated the intellectual waters of nascent 'Sunnī internationalism."[3] In our bid to unmask the identity and nature of al-Ghazālī's legal theory, it is necessary to obtain a general picture of the links that existed between legal theory and an important cognate discipline, theology, during the period when al-Ghazālī began to influence the intellectual environment.

The Relationship Between Law And Theology: From The Formative *madīna* To The Classical *dawla*

The early middle period also marks almost two centuries of state formation that followed the dissipation of absolutism in 334/945. Certain changes were generated in the overall economic, social and intellectual formation of Muslim society. By the end of the sixth/twelfth century, after Shī'ite and Ismā'īlī dissent was subdued, a new Sunnī

[3]Ibid.

Islamic internationalism came into existence. I would argue, that the caliphal state was gradually being displaced by a more complex state structure. This transformation was hastened during the middle period as a result of the growth of Muslim societies through conversion and conquest, which, as a matter of course, paved the way for a more cosmopolitan society. The most dramatic of these changes were those that affected the nature of political power and authority. Literally, the word *madīna* means to be held under authority.[4] Authority over the 'flock' (*raʿiyya*) in the *madīna*-model, manifested in both the primitive Islamic state and the absolutist empire, was very direct and personal, and governance was a matter of ensuring that the rules of the Prophet or the caliph applied.

New state formations manifested themselves in the form of the cosmopolitan medieval state. It was another *dawla*, literally meaning "change, turn or good fortune" (especially the good fortune it brought to the rulers!).[5] Sunnī internationalism involved new social experiments in statecraft. Al-Ghazālī also contributed to these in his reformulation of constitutional law to meet the needs of the Saljūq sultanate.[6] In the new Islamic state, power and authority were indirectly administered to elicit obedience from the "subject." This transformation in the nature of the state is semiotically explicable in the shift from *madīna* to *dawla*. The *madīna*-model signified charismatic authority, represented by the prophet or his viceregent. The *dawla*-model, on the

---

[4]Edward William Lane, *An Arabic-English Lexicon*, (Cambridge: Islamic Text Society, 1984), 1: 945. The word *madīna*, says Lane, also means "being had, or held in possession, or under authority."

[5]Ibid., 1:935. According to Lane, the term dawla means "a turn, mutation or fortune; from an unfortunate or evil to a good and happy state or condition." Frantz Rosenthal, *"Dawla,"* in *Encyclopaedia of Islam*, 2d ed.

[6]al-Darīnī, "al-Fikr al-Siyāsī," 38-41 passim.; Idrīs ʿAzzām, "al-Sulṭa al-Siyāsiyya wa Waẓīfatuhā al-Ijtimāʿiyya: Qirā'a Jadīda li Baʿḍi Jawānib al-Fikr al-Siyāsī li Ḥujjat al-Islām Abī Ḥāmid al-Ghazālī, *Majallat al-ʿUlūm al-Ijtimāʿiyya*, 14, no.4, (Winter 1987): 15-38 passim.

other hand, signified indirect power and authority, via an elaborate bureaucratic structure headed by the caliph-regent and the sultanate. Rational authority represented by the philosopher-king image of the sovereign ruler was a characteristic feature of the new state. The shift in state formation coincided with greater sophistication in the ideological discourse of Muslim society, and this in turn necessitated the development of equally sophisticated legal theory and theology.

A sophisticated politico-theology was required to equip the new state with the necessary coercive authority. These changes had already been manifested in the sectarian strife between competing theological and political groups within the middle period, the main protagonists among whom were the Qadarites, Jabarites, Hanbalites, Mu^{c}tazilites and the Shi^{c}ites. Power is the epiphenomenon of the law, and it is the discourse of the law which gives legitimacy to the political institutions and processes. Law played an important role in introducing and maintaining the new order, but it was legal theory, including in particular the underlying legal philosophy of the judicial structure, which intersected with the politics of the new state model. I believe that political theology informed legal philosophy, and this in turn accelerated the maturity of ideological consent for the new political order. Hence, it is necessary to examine the interaction between the legal theory and the theology of the time as a crucial indicator of the influence of the environment on Islamic disciplines. No religious discipline can avoid being altered by the socio-political transitions and contests for power of the times.

It was Makdisi who, in recent times, urged us to "consider together the development of law and theology."[7] The reason for doing so, he says, is that "we

[7]George Makdisi, "Ash^{c}ari and the Ash^{c}arites in Islamic Religious History (Part 2)," in *Studia Islamica*, 18 (1963): 39.

cannot hope to understand the nomocracy of Islām if we study the theology of Islam without its relation to Islamic law."[8] Makdisi directs us to look for the manifestation of theological disputation in close association with Islamic law. One could add that such an examination should also consider the background of the disciplines under discussion in order to deepen our understanding of this period.

The Interdependence of Law And Theology

In the twentieth century, Joseph Schacht explained the relationship between law and theology in early *madīna*-Islam, saying:

> We might even say that the distinction of two separate literary traditions for religious law and theology, as it has developed, is to some extent fortuitous and provoked by practical reason.[9]

He argues that a certain amount of symbiosis had taken place between the traditional law schools and their theological counterparts. The reasons for this, he says, were not doctrinal, historical or geographical, but adventitious.[10] Given the mutually beneficial relationship between law and theology, Schacht preferred to describe the religious law of Islam as "essential" and its theology as an "epiphenomenon." [11] This suggests that it is the law which generates the theology or, at least acted as a coastguard patrolling the borders of theology.

Schacht's rationale is that the formative periods of Islamic theology and law do not coincide.[12] For instance, he says that it was the political powers and the jurist-

---

[8]Ibid.

[9]Joseph Schacht, "Theology and Law in Islam," in *Theology and Law in Islam*, ed. G. E. von Grunebaum (Wiesbaden: Otto Harrassowitz, 1971), 4.

[10]Ibid., 7.

[11]Ibid., 11.

[12]Ibid., 15.

lawyers who promoted the idea of imitating a legal authority (*taqlīd*), and not the theologians. According to both Schacht and Hallaq, a move to close the "gate" to independent discretion and creative thinking (*ijtihād*) only became evident in juristic circles. Schacht places this move at the end of the fourth/tenth century, while Hallaq believes it occurred in the fifth/eleventh or sixth/twelfth century.[13] Official proscriptions were laid down, saying that it was the duty of every Muslim to follow the recognised authorities (*taqlīd*) of each school. But this did not mean an end to independent juridical discretion (*ijtihād*), since, as Hallaq correctly argues, the closure of the "gate" of *ijtihād* was an historical fiction. The fictional assertion, says Schacht was:

> ... not the cause, but a symptom of a state of mind that had been induced by fear of *doctrinal disintegration*, a fear that was not farfetched at a time when orthodox Islam was threatened by the extreme Shī'ite movement of the Ismā'īlīs and their propaganda. Islamic law reacted to it by imposing the duty of *taqlīd*, but the reaction of theology was different ... in contrast with religious law, theology insisted that *taqlīd* was not enough (italics mine).[14]

Theoretically, the different aims of law and theology could possibly explain the hiatus that exists between the two disciplines. Theology's interest was to establish credal structures. Moreover, theology maintained that, although believers may not have access to the proofs and arguments of beliefs, it was not sufficient merely to follow their teachers in doctrinal matters; they must be personally convinced of the belief. Jurists and lawyers, on the other hand, tried to create ideal social structures. What "bonds Muslims," says Schacht, "is not so much a common creed as a common way of life, a common ideal of society."[15] What both Schacht and Hallaq point out is that despite their very different beginnings, law and theology developed an

---

[13]Wael Hallaq, "Was the Gate of Ijtihād Closed"?, *International Journal of Middle East Studies*, 16, (1985): 20-21.

[14]Schacht, "Theology and Law," 21.

[15]Ibid.

interdependent relationship which could not be easily severed. When law felt threatened by the political and theological schisms, it attempted a strategy of fortifying itself from all outside influences by limiting juristic discretion (*ijtihād*).

To understand the reasoning behind the fortress mentality of law and the openness of theology in the sixth/twelfth centuries and earlier, provides the keys to comprehending the future relationship between law, legal theory and theology. The partially successful move to restrict *ijtihād* was mainly intended to have a similar effect of limiting the relatively uninhibited discipline of theology. Since the two were interdependent, it could have had that effect, bearing in mind the strategic alliances which had been made between the law schools and their theological counterparts from time to time.

In the wake of the anti-*ijtihād* campaign, the law schools, especially the traditionalist ones, saw this as an opportunity to de-link itself from the theological schools in pursuit of their puritan ideals. The idea was to systematise legal theory when it was freed from the influence of theology and 'foreign knowledge" which reflected a larger socio-political mood. The anti-*ijtihād* campaign to separate law and legal theory from theology, was not universally accepted. But it did provide the momentum, in a limited way, for those who wished to do so.

A number of factors favoured the interdependence of law and theology. Firstly, law could not be totally severed from theology because some of the most important theses of legal theory were premised on theological deductions. Secondly, theologians in the early middle period who were anxious to promote their ideological causes could not find a more effective vehicle than legal theory to further some of their goals. This is perhaps the main reason why, according to al-Azmeh, theological schools sought affiliation with legal schools in order 'to embed theological tendencies in the body of

the social mass of the law schools."[16] Indirectly, theology impinged upon the substance of the law through incorporation in legal theory.[17] This manifested itself in the emergence of legal dogma, guarding the sources of the law, forms of legal interpretations, grammar, language, and religious polemics. Thirdly, the broader cosmopolitan influences in the Muslim empire as well as the need for more sophisticated forms of political-theology encouraged the interdependence between law and theology.

Rahman applauds the integration of legal theory during the early middle period into the larger field of Islamic thought, especially theology, since legal theory gained coherence through this integration.[18] What Rahman laments, however, is the imposition of unsynthesised theological dogma upon legal theory that had the 'unfortunate" consequence of 'blatant contradictions in the juristic doctrine." [19] Once a body of legal theory had been sanctified and approved, there was a desire to minimise if not eliminate any future threat to the stability of that edifice. Hence the call for a divorce between theology and legal theory under the euphemistic rubric of the closure of the 'gates" of *ijtihād*. The main fear, as stated by Schacht, was that without the desired theoretical stability, the terrain of law would become the battlefield of epic socio-political struggles.[20]

---

[16]Aziz al-Azmeh, *Arabic Thought and Islamic Societies* (London: Croom Helm, 1986), 221.

[17]Ibid.

[18]Fazlur Rahman, *Islamic Methodology in History* (Islamabad: Islamic Research Institute, 1984), 152.

[19]Ibid.

[20]While there is sufficient evidence to indicate that the social and political struggles inevitably found their way into the law, it has not been adequately admitted, nor sufficiently illustrated by the historians of law.

Closure and exclusion raises the question of the hidden affiliations which exist in the separation of law and theology. The genealogical reconstruction of theological doctrine, implicates legal doctrine in a series of other discourses.[21] What we do find disseminated in legal texts, and in al-Ghazālī's texts for that matter, are the signs and 'texts' which allude to the intellectual battles, the changing patterns of thought, the contradictions, the paradoxes, and the transitions of intellectual thought that took place during the early middle period of Islam. Legal theory still carries those marks, even though the historians of law prefer to recycle the juridical fiction of true discourse and authoritative judgement.

Tracing the Genealogy

It has been argued that philosophical and theological disputes have had an unmistakable influence on the discipline of legal theory.[22] A range of political events generated a series of intellectual trends that occurred in Muslim societies from the second/eighth to the fifth/eleventh centuries. These conflicts were largely over philosophical theology and politics, with the result that the literature of legal theory underwent a substantial metamorphosis. In the hands of al-Shāfiʿī (d. 150/767), the literature of legal theory was simply an elementary form of *juridical theology*. As time

[21]The concept of genealogy is employed here in opposition to the classical philological conception of history. As a move away from the metaphysical terms of history of those of origin, objectivity and legal proof of precedent fact, genealogy simply traces the contingent descent, the chance affiliations and alien forms from which specific singular objects of discourse were formed. See Michel Foucault, "Nietzsche, Genealogy, History," in *Language, Counter-Memory, Practice: Selected Essays and Interviews*, ed. with an Introduction by Donald F. Bouchard, trans. Donald F. Bouchard and Sherry Simon (Oxford: Basil Blackwell, 1977), 139-164 passim.

[22]George Makdisi, "The Juridical Theology of Shāfiʿī: Origins and Significance of Uṣūl al-Fiqh," in *Studia Islamica*, 59 (1984): 5-48.

passed, it became increasingly more complicated and sophisticated as it was impregnated with philosophical theology. This forespelled the confrontation between rationalism and traditionalism. In the third/ninth century the term rationalism embraces discursive and speculative knowledge, and does not differ much in its principles from Stoicism and Aristotelian logic. The traditionalists of the time were those groups whose ideology centered around the literal theory (*naṣṣ*) of the revealed text and the traditions (*ḥadīth*). Traditionalism strongly resisted the encroachment of foreign ideas into Islamic disciplines.

Three major political landmarks in the third/ninth century set the scene for the changes in the intellectual landscape of Islam.[23] The first landmark was the Inquisition (*miḥna*) which began during the rule of the Abbassid caliph al-Ma'mūn (d. 218/833), and continued under his successors, al-Mu^{c}taṣim (d. 228/842), al-Wathīq (d. 233/847) and al-Mutawakkil (d. 247/861). Over a period of fifteen years they enforced the Mu^{c}tazilite doctrine as the official state creed under the cloak of rationalism. This act of despotism could hardly have been said to serve rationalism, and was later the cause of its demise when al-Mutawakkil finally abandoned the movement. During the Inquisition, the little known Aḥmad b. Ḥanbal (d. 241/855) rose to prominence as the champion of the traditionalist cause.

The second landmark was the defection of Abū al-Ḥasan al-Ash^{c}arī (d. c. 325/937) from the ranks of the Mu^{c}tazilites. He joined the traditionalist camp under the banner of Ibn Ḥanbal. Al-Ash^{c}arī placed rationalism in the service of traditionalism and his conversion was a major victory for the traditionalist cause against the Mu^{c}tazilite school.

---

[23]Makdisi, "Juridical Theology," 18-30.

The third landmark was the promulgation of the traditionalist creed under the caliph al-Qādir (d. 422/1031) at the beginning of the fifth/eleventh Century. The Qādirī creed, as it became known, was seen as the ultimate manifesto of resurgent traditionalism against any deviations.[24] Within traditionalism however, there were two distinct schools of thought: one followed the founding fathers of Islām (*salafī*) in matters of dogma which was puritanical in its traditionalist make-up; and the other was inclined towards rationalism placed in the service of religious ideas. This division foreshadowed the heated battle which was to take place within Ash'arism. After the public defeat of the Mu'tazilite creed around the middle of the third/ninth century, all rationalist tendencies would be besieged. As a result, all philosophical theologies, including those of the rationalist Ash'arīs, sought refuge outside the theological schools.

The Mu'tazilites entered the Ḥanafī law school, and the rationalist Ash'arīs found their way into the Shāfi'ī law school. Ash'arism also succeeded in gaining a foothold in some sections of the Mālikī law school. This new relationship between the law schools and their theological refugees was, at first, a mutually rewarding exercise, perhaps, slightly more to the advantage of the theologians than the lawyers. Such alliances are common in a politically unstable environment, but the Shāfi'ī's in particular soon recognised the error of welcoming the Ash'arīs into their midst.

There was dissent among the Shāfi'ī ranks, as they arrived at different 'readings' of Abū al-Ḥasan al-Ash'arī. One faction argued that he was a traditionalist, in the sense of being a follower of the founding fathers of Islām. The other faction, on the other hand, argued that he employed philosophical theology in order to defend the

[24]Adam Mez, *The Renaissance of Islam*, trans. Salahuddin Khuda Baksh and D. S. Margoliouth (London: Luzac & Co., 1937), 206-209, for details of the Qadiri Creed.

faith. The problem with the writings of al-Ashʿarī was that he claimed to be a traditionalist while not fully subscribing to their strictures. Pro-*kalām* Ashʿarism and anti-*kalām* Ashʿarism emerged from this ambiguity. The traditionalists were not so much opposed to reason as they were to those whose explanations of religion contained theological arguments. They viewed the latter as being the product of foreign knowledge. They believed that there was nothing inconsistent in a traditionalist using *reason* in defence of religion and the elaboration of the law. The anomaly arose when someone claiming to be a traditionalist employed philosophical theology and rationality in defence of a religious premise. This clash signalled the divide between Muslim rationalism and Muslim traditionalism.[25]

Traditionalists would use practical reason only to understand the Qur'ān and the traditions (*ḥadīth*) of the Prophet. Anything not comprehensible through reason, they would reserve judgement and declare their belief in it without further inquiry (*bilā kayfa*). Muslim rationalists, among both the Ashʿarites and the Muʿtazilites, would also advocate the use of reason in understanding the religious sources. However, should a matter appear to contradict reason they would subject it to metaphorical interpretation (*taʾwīl*) and rationalisation. The confusion and contradiction that existed in the conflict between rationalism versus traditionalism was further heightened by a third scenario. It is very likely that some of the Ashʿaris, and this may have been a practice initiated by al-Ashʿari himself, reverted to the use of philosophical theology (*kalām*) in defence of the faith after having rejected it at some stage.

Ibn ʿAsākir and al-Subkī, for instance, have tried to show that Ashʿarism is really pro-*kalam*.[26] In fact the aim of al-Subkī's *Ṭabaqāt* was to establish the

---

[25] Makdisi, "Ashʿarī and Ashʿarites (2)," 22.

[26] George Makdisi, "Ashʿarī and the Ashʿarites in Islamic Religious History (Part 1)," in *Studia Islamica*, 17 (1962): 60-64.

credentials of Ashʿarism as a school which followed middle-of-the-road traditionalism and favoured *kalām*.[27] Al-Subki's professor, al-Dhahabī, a dedicated Shāfiʿī and Ashʿarī, took just the opposite position, arguing that Ashʿarism was anti-*kalām*.[28] The point that I particularly wish to stress here is that Ashʿarism's position on *kalām* is, at best, difficult to pinpoint and, at worst, ambiguous.

The inner tensions within the law schools on the question of *kalām* led to a new type of theology promulgated by the traditionalists, a juro-moral theology called *usul al-din* - literally, 'fundamentals of religion."[29] Abū al-Muzaffar al-Samʿānī (d. 489/1095), was one of the first scholars to make this distinction, thereby avoiding the term *kalām*.[30] The main purpose of this juro-moral theology was to create an alternative discipline to philosophical theology for studying the fundamentals of religion.[31] Juro-moral theology (*uṣūl al-dīn*) and legal theory (*uṣūl al-fiqh*) had some common topics, such as the discussions on consensus, disputation and arguments. In support of *uṣūl al-dīn*, the traditionalists tried to restrict legal theory (*uṣūl al-fiqh)* exclusively to jurisprudential matters. At bottom it was nothing but a clever pretext to deny the pro-*kalām* Ashʿarite/Shafiʿī's the opportunity of smuggling *kalām* arguments into the discipline of legal theory.[32] The vehemence against *kalām* can be gauged from the words of the Andalusian traditionist (*muḥaddith*), Ibn ʿAbd al-Barr (d. 463/1070):

---

[27]Makdisi, "Ashaʿri and Ashʿarites (1)," 60.

[28]Ibid., 65.

[29]Note the number of titles which describe usul al-din: al-Ashʿari, *al-Ibāna ʿan Uṣūl al-Diyāna*; al-Samarqandī, *Uṣūl al-Dīn*; ʿAbd al-Qāhir al-Baghdādī, *Kitāb Uṣūl al-Dīn*; Fakhr al-Dīn al-Rāzī, *Maʿālim Uṣūl al-Dīn*, to mention but a few.

[30]Makdisi, "Juridical Theology," 35-36.

[31]Ibid., 38 for Abu Shāma's condemnation of pro-kalām theologians.

[32]Both al-Anṣārī (d. 1119/1707) and Ibn ʿAbd al-Shakūr (d. 1225/1810), tell us that particularly among the moderns (muta'akhkhirūn) of the law schools there was a desire to separate theology from legal theory: see Muhammad b. Niẓām al-Dīn al-Anṣārī, *Fawātiḥ al-Raḥmūt*, 2 vols. on the margins of *al-Mustaṣfā* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1403/1983), 1:10.

> There is consensus among the jurists and traditionists in all the cities (*amṣār*) that the people of *kalām* are innovators and deviant. And none of them are recognised by any of the cities to be among the ranks of the learned (*ʿulamā'*). The learned are people of tradition (*āthār*) and those who have juridical insight (*tafaqquh*) into such traditions. They are distinguished in terms of their perfection, distinction and understanding.[33]

The traditionalist viewpoint of separating legal theory from *kalām* became entrenched. Even a leading Muʿtazilite theologian like Abū al-Ḥusayn al-Baṣrī (d. 436/1044) supported the separation of *kalām* from the discipline of legal theory.[34] Ironically, he continued by saying that without knowledge of *kalām*, the reader will be unable to understand legal theory and will therefore fail to understand the subject.[35] Generally, the legal theory authored by Muʿtazilite scholars generously entertained issues related to *kalām* and legal philosophy. Yet, in theory, all authors made the rhetorical disclaimer of distancing themselves from *kalām* in treatises of legal theory. This only illustrates that even the most hardened rationalist legal theoreticians had to make 'ideologically correct' statements in order to make their work, at least on the surface, acceptable to their traditionalist opponents, even though the content and conclusions of their work differed radically from these statements.

Clearly, the anti-*kalām* rhetoric of the traditionalists was not merely directed at the Muʿtazilites but also at their fellow Ashʿarite schoolmen.[36] Their anti-*kalām* stance, however, had an effect on the production of traditionalist *uṣūl al-dīn*, and *kalām*-less legal theory. A closer examination of the types of legal theory could provide more

---

[33]Abū Isḥāq al-Shātibī, *al-Iʿtiṣām*, (n.p.: Dār al-Fikr, n.d.), 2:333.

[34]Makdisi, "Juridical Theology," 15.

[35]Ibid.

[36]Several works have been produced in condemnation of kalam, like those of Abū Sulayman al-Khaṭṭābī al-Busṭī (d. 388/998), author of *al-Ghunya ʿan al-Kalām wa-Ahlihi [Freedom from kalām and its Partisans]*; the Hanbalite mystic, al-Anṣārī al-Ḥarawī (d. 481/1088), *Dhamm al-Kalām [The censure of Kalām]*; or the Hanbalite traditionalist, Ibn Qudāmā (d. 622/1225), *Taḥrīm an-Naẓar fī Kutub Ahl al-Kalām*, translated by Makdisi as *Ibn Qudama's Censure of Speculative Theology* (London:1962). See Makdisi, "Ashʿarī and Ashʿarites (1)," 48-49.

insights as to the pattern of the interface between law and theology among the schoolmen.

Typology of Legal Theory

Ibn Khaldūn (d. 780/1397) distinguishes between two types of literature in legal theory; that of the Shāfiʿī theologians (*ʿulamā'* of *kalām*) and the Ḥanafī jurists.[37] The Shāfiʿī theologians claim to deal exclusively with principles in their legal theory, employing speculative theology, while the Ḥanafī jurists try to harmonise principles (*uṣūl*) and rules (*qawāʿid*) with the applied derivatives (*furūʿ*) of the positive law. A third type of literature, combining the methods of the Shāfiʿī theologians with those of the Ḥanafī jurists was also developed.[38] Ibn Khaldūn made the distinctions for a very specific reason - to explain the use of analogy in different types of legal theory. Since then this classification has erroneously become the accepted standard typology for legal theory in the early ninth/fifteenth century. But we already know that within at least one law school, the Shāfiʿī school, there were legal theorists who espoused what Laoust calls speculative theology and others who adopted an anti-*kalām* juro-moral

---

[37]ʿAbd al-Raḥmān b. Muḥammad b. Khaldūn, *Muqaddima Ibn Khaldun*, (Beirut: Dār al-Jīl, n.d.), 504-505. Some of the key authors among the Shāfiʿī *ʿulamā'* of *kalām* were: Aḥmad b. ʿUmar bin Surayj Abū al-ʿAbbās (d. 306/918); Abū al-Ḥasan al-Ashʿarī (d. 324/954); al-Qaḍī Abū Bakr al-Bāqillanī (d. 413/1022); al-Qaḍī ʿAbd al-Jabbār b. Aḥmad al-Ḥamdānī (d. 415/1024); Abū al-Ḥusayn al-Baṣrī (d. 436/1044); al-Ghazālī (d. 505/1111) and Fakhr al-Dīn al-Rāzī (d. 606/1209). Titles of Ḥanafī uṣūl al-fiqh works: Some of the key authors in the Ḥanafī trend were al-Māturīdī himself (d. 370/941); al-Karkhī (d. 340/951); al-Jassās al-Rāzī (d. 370/980); Abū Zayd al-Dabūsī (d. 430/1038); al-Pazdawī (d. 483/1090); al-Sarakhsī (d. 490/1096) and ʿAbd al-ʿAzīz al-Bukhārī (d. 730/1329). See the 'Muqaddima" by al-Shaykh Khalīl al-Mays in al-Muʿtamad fī Uṣūl al-Fiqh of Abū al-Ḥusayn al-Baṣrī (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.).

[38]Authors of *uṣūl* works that combine the methods of the *ʿulamā'* of *kalām* and the Ḥanafīs are: Muẓaffar al-Dīn al-Sāʿatī (d. 694/1294); Ṣadr al-Sharīʿa (d. 747/1346); Ibn al-Humām (d. 861/1456); Ibn Amīr al-Ḥāj (d. 879/1474); Tāj al-Dīn al-Subkī (d. 771/1369) and Ibn ʿAbd al-Shakūr (d. 1259/1808).

theology.[39] Neither can we ignore the fact that the Ḥanafī jurists were not oblivious to theological concerns in their study of legal theory. However, even these distinctions suppress the larger narrative of the intellectual history of legal theory. Given the complex interweaving of legal theory and theology, it should be obvious that Ibn Khaldūn's standard typology of legal theory, whether typifying that of Shāfiʿī theologians or that of Ḥanafī jurists of the time, was inadequate.[40] It does not shed light on the full scope of this debate and only creates certain lines of differentiation. Read superficially, the variety in methods does not indicate any significant epistemological differences between the various genres of *uṣūl*-writing.

Ḥājī Khalīfa recorded a statement from ʿAlā al-Dīn Abū Bakr b. Aḥmad al-Samarqandī (d. 553/1158) which may shed light on our exploration of the deeper implications of the distinctions of style and method in legal theory:

---

[39]Naming a brand of legal theory as that espoused by the Shāfiʿī theologians may reflect the attempts by later Shāfiʿī's like al-Subkī, who wished to create a new image for a Shāfiʿī school comprising both traditionalists and rationalists. This created the impression of a broad-minded Shāfiʿī school which was inclusive of all the sciences, including *kalām*, see Makdisi, "Ashʿarī and the Ashʿarites (1)," 60. Also see Henri Laoust, "Ṣāfī et le Kalām d'apres Rāzī," in *Recherche d'Islamologie: Recueil d'articles offert a Georges Anawati et Louis Gardet par leurs collegues et amis* (Louvain et Louvain-La-Neuve, 1978), 399.

[40]Makdisi, "Juridical Theology," n 2, 42, also has problems with this rigid classification. Aron Zysow, "The Economy of Certainty; An Introduction to the Typology of Islamic Legal theory" (Ph.D. diss., Harvard University, 1984), 121, reinforces this point. After discussing the status of an imperative in the various schools, Zysow observes: "This is a further example of the fact which must be very plain by this point, that the standard representation of the uṣūl of the Ḥanafīs as peculiarly legal, in contrast with the theological usul of the other schools is without foundation."

> Know that *uṣūl al-fiqh* is a derivative of the science of principles of religion (*ʿilm uṣūl al-dīn*). It was therefore inevitable that writings on this subject would reflect the creed of their authors. Now most of the writings on *uṣūl al-fiqh* were written by the *Muʿtazilites* our opponents in fundamental principles [of religion], and the people of *ḥadīth* traditionalists, our opponents in applied derivatives. Thus one cannot rely on their writings.[41]

Al-Samarqandī, a Ḥanafī, is clearly expressing his disagreement with the writings of both the Muʿtazilites and the traditionalists on legal theory. In the case of the former, their fundamental principles were theologically unacceptable to him, and, in the case of the latter, the manner in which they deduced applied derivatives (*furūʿ*) in positive law from the traditions was objectionable. It seems that although he was keen to search for sound theological principles, he was not prepared to simply deduce secondary rules from the literal traditions. This gives us an indication of his inclination towards informed judicial opinion (*raʾy*). Al-Samarqandī laments the disturbing feature of sixth/twelfth century Ḥanafī writings on legal theory. The best works he said, were those of scholars whose presentations involved a synthesis of the science of fundamental principles (*uṣūl*) with the applied derivatives (*furūʿ*) such as al-Mātūrīdī's *Maʾākhidh al-Sharʿ* (Sources of the Law) and *Kitāb al-Jadal* (Book of Dialectic). Although the presentations of the traditionalists were excellent, he admitted that they failed to "master the subtleties of fundamental principles and reason which led their views to concur with those of their opponents on some topics."[42]

In al-Samarqandī's opinion, the Ḥanafīs were forced to capitulate as a result of their own intellectual ineptitude and lack of perseverance. The most valuable insight to be gained from al-Samarqandī's quotation is that he did not consider legal theory to be an autonomous discipline. His mention of juro-moral theology (*uṣūl al-dīn*), the traditionalist alternative to theology, signals his distance from philosophical theology. Nevertheless, it suggests that even in traditionalist circles, legal theory had at least

---

[41]Ḥājī Khalīfa, *Kashf*, 1:110-111, citing al-Samarqandī's Mizān al-Uṣūl fī Natāʾij al-ʿUqūl.

[42]Ibid.

some links to theology. This means that the differences between the various theological schools, as mentioned by al-Samarqandī, were more than just stylistic and methodological differences. They referred to more substantive differences in the perception of law and legal theory, in which the role played by *kalām* was hardly insignificant.

Some contemporary scholars caution against exaggerating the role of theology in legal theory.[43] Hallaq questions detailed investigations of theological postulates in legal theory since he believes that this is to assert that legal theory is a theological construct and to deny that there is any positivistic value of legal theory with other branches of substantive law.[44] Hallaq asserts that questions such as whether God's speech was an act or an attribute "were never discussed in legal theory." Hallaq's criticism is primarily directed at the orientalist scholars like Goldziher and Hurgronje who held the view that legal theory was a theological construct. He maintains that some contemporary scholars, Weiss among them, have uncritically accepted some of these assertions.[45]

One should admit, however, that while one cannot reduce legal theory to being a theological construct, it is nevertheless structurally tied to theology. Otherwise it is difficult to understand how, within one school alone, tensions between pro-*kalām* and anti-*kalām* Shāfiʿī theorists could have existed. In a bid to avoid a simplistic conclusion, one should not underestimate the way in which theology determines legal

---

[43]Wael Hallaq, review of *The Search for God's Law*, by Bernard Weiss, in *International Journal of Middle East Studies* 26, no.1 (February 1994): 153.

[44]Bernard Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi* (Salt Lake City: University of Utah Press, 1992) dedicates a chapter to theological postulates.

[45]Hallaq, 'Review." I am also indebted to Prof. Hallaq for some personal correspondence on this topic.

theory. Much of one's conclusion will also depend on the sample of legal theory examined. In the case of al-Āmidī (d. 631/1233), legal theory was heavily influenced by theology. Later scholars, like Abū Isḥāq al-Shāṭibī (d. 790/1388), the Andalusian legal theorist and jurist, based his metatheory of law on certain theological premisses, distinguishing between the two senses of the will of God, (as expressed in God's speech) - *irāda khalqiyya qadariyya* - a demiurgical creative will and *irāda amriyya* - a will expressed in the command to do certain things and to refrain from others.[46] Al-Shaṭibī pointed out that theological differences between the Ash^{c}arites and the Mu^{c}tazilites also surfaced in juristic terms, such as the notions of obligatoriness and prohibition. The juristic dispute had as its premiss a theological disagreement, namely whether "obligatoriness and prohibition ... are referable to the properties of a substance or to the nomothetic discourse of the law (*shar^{c}*)"?[47]

The object of legal theory is to deal with the sources of nomothetic discourse, these being the locus of the divine will. This divine will finds expression either directly, in human activity with humanity as the substrate, or indirectly, where humanity is delegated a certain discretion.[48] God creates the normative archetypes of human activity, the *al-aḥkām al-shar^{c}iyya*, and the human actors, and "leaves the marriage of reality and archetype to the actors."[49] How God makes these archetypes known has been discovered through theological exploration and serves to confirm the notion that some issues of legal theory were based on *kalām* postulates. The main topic of legal theory, namely the Qur'an, is unquestionably affected by theological doctrines.

---

[46]Abū Isḥāq al-Shāṭibī, *al-Muwāfaqāt*, 4 vols. (Beirut: Dār al-Ma^{c}rifa, n.d.), 3:119-120.

[47]Ibid 1:45.

[48]al-Azmeh, *Arabic Thought*, 81.

[49]Ibid.

Two examples of major debate in classical Islam come to mind. The first was the controversy about whether the Qur'ān was the created or uncreated word of God. The Mu^{c}tazilites claimed that the divine word was created, which implies that human beings are the recipients of the divine revelation. In contrast, the Ash^{c}arī notion of the uncreatedness of the revelation diminishes the human element in the revelatory order.[50] For the Ash^{c}arīs, the divine word became a sacerdotal order, unattainable to discourse, and it therefore had a semiotic value, "gesturing towards and standing in for the authority of religion and its experts."[51] The other example was the issue of the abrogation of certain passages of the Qur'ān. The Mu^{c}tazilites rejected the concept of abrogation claiming that to do so would be tantamount to *badā'*, an arbitrary claim that God had changed his mind. The Ash^{c}arīs maintained that given His omnipotence, anything was possible.[52] These examples, relating as they do, to the very fabric of Islam should put the matter of theologisation of legal theory beyond doubt.

The theologisation of legal theory could also have been seen as playing a more subtle, but equally important role in ratifying the ideological concerns of the time. Al-Azmeh argues that the very systematisation by means of a legal hierarchy was not only intended to provide a sense of theoretical coherence, but also a certain amount of ideologisation.[53] Legal theory was thus designed to give coherence to the body of positive law (*fiqh*) that was in currency before the systematisation of legal theory. Legal theory was then the agency of ratification,

---

[50]Naṣr Ḥāmid Abū Zayd, *Mafhūm al-Naṣṣ: Dirāsa fī ^{c}Ulūm al-Qur'ān*, (Cairo: al-Hay'a al-Miṣriyya al-^{c}Amma li al-Kitāb, 1990), 277.

[51]al-Azmeh, *Arabic Thought*, 68; Bernard Weiss, "Law in Islam and in the West: Some Comparative Observations," in *Islamic Studies Presented to Charles J. Adams*, ed. Wael B. Hallaq and Donald P. Little (Leiden: E. J. Brill, 1991), 243-245.

[52]I. Goldziher and A. S. Tritton, "Badā'" in *Encyclopaedia of Islam*, 2nd ed.

[53]Aziz al-Azmeh, "Islamic Legal Theory and the Appropriation of Reality," in *Islamic Law: Social and Historical Contexts*, ed. Aziz al-Azmeh (London & New York: Routledge, 1988), 251.

> the location in which the legal institution and its skills are constituted as ideological elements in society. Like other ideological facts they are constituted by naming, by the attachment to them of primary normative values.[54]

The act of naming something as *sharī'a* marks a moment in Islamism which is not an abstract or logical one, as some theologians would be inclined to think, but

> one which transcribes the politics of the world into the very structure of legal discourse, and confers upon the *usūl*, especially the textual ones, a logical primacy they do not have.[55]

This worldliness of the text in legal theory cannot be disconnected from the politics of juridical-theology in early Islam.[56] Legal theory and theology, therefore, form a discursive relationship, where bodies of knowledge relate to social practice and the structure of society. This means that it is primarily a power relationship, and whenever power comes into play, a relationship becomes political. What Hallaq calls the "given or self-evident premises" of legal theory are precisely those elements which require investigation in order to establish just how "self-evident" they really are.[57]

Conclusion

It becomes clear that the Islamic disciplines that emerged in the middle period of Islamic history were not insulated from the political and intellectual turbulence of the time. The tension between *shar'ia*-minded and traditionalist approaches versus more eclectic and innovative approaches is evident. The central debate was over the

---

[54] Ibid., 256.

[55] Ibid.

[56] Wael Hallaq, 'Usūl al-Fiqh Beyond Tradition," in *Journal of Islamic Studies*, 3 no.2 (1992): 190.

[57] Ibid., 178.

legitimacy of the philosophical or dialectical theology (*ʿilm al-kalām*) which was viewed as an alien and foreign influence on Islam.

Theology shared some common interests with legal theory. While the traditionalists eschewed theology, they favoured the advancement of legal theory. Legal theory had, therefore, to be purged of the negative influences of theology, and so a sterilised juro-moral theology (*uṣūl al-dīn*) was developed. These internal conflicts within the disciplines were, however, reflections of larger issues within the Muslim community in the middle period. The new state evolution symbolised by the emergence of the cosmopolitan *dawla* were the instruments of larger changes in Muslim society. The new forms of authority and power required new discourses to elicit consent from their political subjects. Political-theology, in particular, and theology in general, were the mainstay of the new ideological discourses. But these ideological discourses were in themselves not free from the internal conflict. Legal theory, given its intimate relationship with theology could not remain free from the effects of these conflicts and was also ideologically interpellated. The foreign thought introduced by the rationalists could be embodied in the term *kalam* - philosophical or dialectical theology. This importation of rationalist thinking caused disorder and instability among the legal and theological ranks - an interesting and exciting situation for those who welcomed change and growth, but one which the traditionalists found very threatening, and which they tried, by all means, to suppress.

Critical scholarship can neither cloud nor ignore these theological disseminations in *uṣūl al-fiqh* literature. Hallaq's critique against reductionism is invaluable in that it restrains us from being tempted to read off *kalām* from *uṣūl al-fiqh* texts as if *uṣūl* mechanically emanates from the first principles of *kalām*. Surely, by now it is recognised that there is no unmediated presence of texts. The problematic area of reductionism is a hastening towards generalisation and essentialism, which

claims that law is immutable or eternally attached to *kalām* precepts and therefore monolithic and rigid.[58] Any genealogical analysis of *uṣūl al-fiqh* would be unable to avoid an explanation of the singular references, the discontinuities, the recurrences and play, the surfaces of events, the shifts and subtle contours that refer to *kalām* in *usūl al-fiqh* texts. The paralysing effects of essentialism have been evident in the methodologies of some orientalist scholars, and even some contemporary orthodox scholars, and this reduces the intellectual project and denies it inventiveness and creativity. In our bid to unmask the identity of al-Ghazālī's *uṣūl al-fiqh* it becomes necessary to probe the links between *kalām* and *uṣūl* as a site of critical investigation.

[58]Ibid., 195.

Chapter 3

Jurisprudence as Gardening: Theo(r)logising the Jurist's Empire Through Masks and Metaphors

Introduction

Ibn al-Jawzī, one of al-Ghazālī's biographers, tells us that on his retirement from public life, when he lived in Ṭūs, al-Ghazālī built a beautiful house (*wa bana dāran ḥasanatan*) with a landscaped garden (*wa garasa fīhā bustānan*).[1] Beautiful gardens are in keeping with the medieval tradition of Islamic Persia.[2] A life of abstinence and asceticism did not have to be devoid of aesthetic comforts, it seemed.

This detail may at first seem trivial, but in the context of al-Ghazālī's legal theory it gains significance. For in the *al-Mustaṣfā*, al-Ghazālī used several botanical metaphors to describe the structure of his legal theory. Imagine, the retired al-Ghazālī taking a daily walk in his garden and enjoying its beauty. While admiring the flowers and fruit-trees, he would also be ordering his reminiscences. Gradually it dawns on him that legal theory is very much like a tree, with roots, bark, branches and fruits. There is a strong likelihood that al-Ghazālī's daily routine and surrounding botanical context may have induced the aesthetic metaphor from botany which he employed extensively.

In this chapter sections of the *al-Mustaṣfā* will be subjected to a close reading in order to examine to what effect al-Ghazālī employed the aesthetic metaphor in the

---

[1]Ibn al-Jawzī, *al-Muntaẓam*, 9:170.

[2]G. Marcais, *"Bustān,"* in *Encyclopaedia of Islam*, 2d ed.

language of law. The same text will be used to investigate the coexistence of theology and legal theory.

Ambiguous Wording and 'The Quintessence'

Al-Ghazālī describes his last work as *al-Mustaṣfā fī ʿIlm al-Uṣūl* (The Quintessence in the Discipline of Principles). This is how the title is written in the published version of this book.[3] The use of the shortened term "discipline of foundations or principles"*(ʿilm al-uṣūl)*, was the generic term used by Muslim bio-biographers, historians and even jurists. The discipline of fundamentals could have two referents: discipline of the foundations of law (*ʿilm uṣūl* ***al-fiqh***), or, discipline of the foundations of religion (*ʿilm uṣūl* ***al-dīn***).[4] The ambiguity of the title of this work of al-Ghazali cannot summarily be dispensed with. For if it was considered to be a work on legal theory (*uṣūl al-fiqh*), then the question arises as to why al-Ghazālī did not state the title of the work as *al-Mustaṣfā min ʿIlm Uṣūl al-Fiqh*, instead of leaving it unqualified as *ʿilm al-uṣūl*. Only the biographer al-Safadī (d. 764/1363) said that the proper title was *al-Mustaṣfā* ***fī*** *Uṣūl al-Fiqh* (*The Quintessence* ***in*** *the Discipline of Principles*).[5] Other leading biographers, however, give it the title *al-Mustaṣfā min ʿIlm al-Uṣūl* (*The Quintessence of the Discipline of Principles*). Interestingly, an earlier title by al-Ghazālī was also titled *al-Mankhūl min ʿIlm al-Uṣūl* (*The Sifted Portion of the Discipline of Principles*). In both instances al-Ghazālī's titles were non-specific and did not state whether they were legal theory (*uṣūl al-fiqh*) or, juro-moral theology (*uṣūl al-dīn*). The title and, by definition, the

---

[3]In the Būlāq edition the cover page reads *al-Mustaṣfa fī ʿilm al-uṣūl* and the title page reads *al-Mustasfa min ʿilm al-usul*.

[4]Also see Nabil Shehaby, "*ʿIlla* and *Qiyās* in early Islamic legal theory," *Journal of the American Oriental Society*, 102, no.1 (1982): 27, n.1.

[5]Salāḥ al-Dīn Khalīl bin Aybak al-Safadī, *al-Wāfī bi al-Wafayāt*, Bibleotheca Islamica series, ed. Hellmut Ritter (Wiesbaden: Franz Steiner Verslag GMBH, 1981), 1:276.

contents of the book, therefore become intriguingly polysemous. Scholars are partially correct when they say that it is a work on *uṣūl al-fiqh*.[6] However, close investigation of the semantics of the title, coupled with an equally close reading of the text and some historical perspective of terminology produce a very different picture. Two questions come to mind. Firstly, did al-Ghazālī deliberately make the title ambiguous by only calling it *al-Mustaṣfā min ʿIlm al-Uṣūl*? And, if so, why did he leave the title open to ambiguity and question? Why did he not call it *al-Mustaṣfā min ʿIlm Uṣūl al-Fiqh* in the first place? It seems strange that he did not qualify it as a work of legal theory, since this is what is declared in the introduction as we will see, and verified in the content. But this is not the whole story.

A close reading will show that both the openness of the title and the privileged status of *kalām* in the *al-Mustaṣfā* are stock topoi in al-Ghazālī's text and are the equivalent of his "signature."[7] The "disseminating" power of language, namely its capacity to graft itself onto new contexts of meaning makes it possible for the topoi to dissolve itself without notice but still function as signifying systems that generate all kinds of allusive cross-reference from one text to another.[8] This supports Derrida's claim about the materiality of language. Effects of meaning are caused by chance collocations, unlooked-for homonyms, and a stubborn defence against language being reduced to a stable economy of words and concepts.[9]

---

[6]Shiblī Nuʿmānī, *al-Ghazzālī* (Delhi, Rangin Press, 1923), 21; Abū Zahra, "al-Ghazālī al-Faqīh," 531.

[7]Christopher Norris, "Deconstruction, Post-Modernism and the Visual Arts," in *What is Deconstruction* (London: Academy Editions, 1988), 15.

[8]Ibid.

[9]Ibid.

Theology and Law in al-Ghazālī

When al-Ghazālī made his appearance on the academic terrain the `politics' of theology (*ʿilm al-kalām*) were already considered part of the controversial band of `foreign sciences.' Fazlur Rahman (d. 1988) believed that al-Ghazālī's contribution to the relationship of law and theology did create a synthesis between the two, as much as providing both disciplines with a personal meaningfulness and depth.[10] According to Rahman, al-Ghazālī attempted a

> ... bilateral synthesis between theology and Sufism on the one hand, and law and Sufism on the other. Sufism stands in the centre, which is in perfect consonance with the personal character of al-Ghazālī's reform.[11]

Al-Ghazali himself made some critical remarks about theology and law. In his *Mizān al-ʿAmal*, he said:

> ... as for dialectic, it is the least beneficial for genuine guidance. For the real searcher of truth is not convinced by an argument based on the assumptions of the opponent [as *kalām* is] which assumptions may not be true in themselves. As for the common man, they are beyond his understanding [and hence useless for him], while the disputatious opponent, even when he is silenced [by the *mutakallim's* arguments], usually persists in his own beliefs and merely thinks that he is unable to defend his position saying, that only if the founder of his school were alive now and present, he would get rid of the *mutakallim's* arguments. Now, most of what the *mutakallimun* say in their disputations with other sects is just dialectics.[12]

He then goes on to say that *kalam* is a heresy (*bidʿa*) and an evil. In order for *kalām* verities to become true, they have to be lived through and be experienced by the human heart, for in the universe only God's will is operative.

Al-Ghazālī had a love-hate relationship with *kalām*; at different stages of his life he expounded differently on it, and many of the remarks he made on this score are

---

[10]Fazlur Rahman, *Islam* (Chicago: University of Chicago Press, 1979, 110.

[11]Ibid.

[12]Abū Ḥāmid al-Ghazālī, *Mizān al-ʿAmal* (Cairo: Maktabat al-Jundī, n.d), 134.

ambiguous.[13] This makes it difficult to pin him down to an outright condemnation or approval of *kalām*. At one point, he did concede that as a scientific tool it could be used with caution by those who employed it skillfully, especially in debates.[14]

In *Mizān al-ᶜAmal* al-Ghazālī characterised *fiqh* "as a science to the body just like medicine," and declared that *fiqh* was as much superior to grammar, a purely verbal science, as grammar is to the arts of dance and music.[15] Similarly, in the *Iḥyā'*, he granted jurisprudence and jurists the power to deal indirectly with matters of religion. However, he also highlighted what he saw as the abuse of law in citing the view of Abū Yūsuf, the disciple of Abū Ḥanīfa, who managed to find a legal loophole to avoid the payment of the annual poor tax, *zakāt*.[16] Al-Ghazālī then approvingly cited the comment of Abū Ḥanīfa, who said that such a loophole was merely a product of Abū Yūsuf's legal understanding (*fiqh*), but it certainly bordered on defeating the ends of law. Al-Ghazālī added that while such lawyering may legitimate a legal practice, it ignored the harmful spiritual effects of such practices.[17] He also condemned the jurists for their preoccupation with the minutiae of law and their abjuring of moral philosophy.[18] Although he said nothing directly, he censured jurists and lawyers, saying that one could guess why they vied with each other to manage religious endowments, trusts, and be appointed to governmental office, pointing to the material gain that they derived from such work, legitimate though that might be. "Indeed the science of religion (*ᶜilm al-dīn*)," he said, "has been destroyed because the

---

[13]Abū Ḥāmid al-Ghazālī, "Iljām al-ᶜAwām ᶜan ᶜIlm al-Kalām" in *Majmūᶜa Rasā'il Imām al-Ghazālī* (Beirut: Dār al-Kutub al-ᶜIlmiyya, 1406/1986), 61.

[14]Ibid.

[15]al-Ghazālī, *Mizān*, 135 and 137.

[16]al-Zabīdī, *Itḥāf*, 1:152.

[17]Ibid., 1:157.

[18]Ibid., 1:169-70.

learned (*ʿulamāʾ*) have espoused evil."[19] He toned down his harsh assessment of jurists and said:

> If you ask me whether this is my own belief, in which case it is opposed to the unanimous opinion of the jurists (*fuqahāʾ*), or whether I am only relating an opinion, in which case whose opinion is it? I will reply that I am only relating the opinion of the *ṣūfī* school on which I have based the major part of my present book... If you ask me whether this opinion is true, I will say that this book is not meant to explain what is true and false by an argument, but that it contains counsels... so that a person may not ignore what the ṣūfīs had said. For what they say is apparently not of a remote possibility, so that a seeker of knowledge and guidance should at least investigate its possibility.[20]

Rahman's assessment of al-Ghazālī's attempt to relate law and theology to the inner life of the individual is an accurate one.[21] However, he does point out a shortcoming in al-Ghazālī's reformation of the law. Al-Ghazālī was intent only on reforming the law in as much as it affected personal piety. Therefore, he reduced the law to a personal phenomenon where both law and theology were to be related to the spiritual life and thus personalized. He did not attempt to reform the content of the law or theology. Rahman lamented that one of the most brilliant minds in Islamic thought limited his reforms of law and theology to the personal sphere. When he did reform law and theology in the public sphere, al-Ghazālī did not propose a moral philosophy whereby those laws were to be followed.[22]

Rahman's lament is indicative of the two types of arguments that seem to recur in the discourse of legal theory: questions of epistemology and questions of ontology. By defining terms, concepts and meanings, al-Ghazālī went to great lengths to formulate a

---

[19]Ibid., 1:170.

[20]al-Ghazālī, *Mīzān*, 137.

[21]Fazlur Rahman, "Functional Interdependence of Law and Theology," in *Theology and Law in Islam*, ed. G. E. von Grunebaum (Wiesbaden: Otto Harrassowitz, 1971), 92-94.

[22]Rahman, "Functional Interdependence," 94.

theory of knowledge with great conceptual clarity. On the other hand, his *sufi* insights alerted him to the essence and purpose of life, which he introduces to law and legal theory. This also enables him to criticise jurists for their failure to grasp the moral and ontological questions of law.

In his autobiography, *al-Munqidh min al-Ḍalāl* (*Deliverance from Error*), al-Ghazālī claims to have abandoned all theology, logic, law and philosophy in order to embrace the esoteric path of Sufism. However, he did return to these disciplines once again. According to the contemporary Egyptian scholar Abū Zayd, the later al-Ghazālī was not content to play the role of a theologian, or philosopher or even the role of a *ṣūfī*, but instead sought to present a unified project for the revival of the science of religion.[23]

Al-Ghazālī was therefore preparing for another phase of his life, as a public reformer where the disciplines of theology and law would interact. *Al-Mustaṣfā* must then be placed at that stage of his life when he attempted to reform the content of the disciplines in order to give substance to his social reforms. Chronologically, *al-Mustaṣfā* is one of the last instances where al-Ghazālī disclosed his epistemological presuppositions while reflecting on legal theory.

The al-Ghazālī that Rahman criticises is the author of the *Ihyā'* and *Mizān*, where he mainly contemplated personal reform. It seems that the later al-Ghazālī was beginning to seek a public role for his reform. This is consistent with Laoust's observation that *al-Mustaṣfā* is the legal philosophy underlying al-Ghazālī's politics:

[23]Abū Zayd, *Mafhūm al-Naṣṣ*, 278.

> Avec le Mustaṣfā...elle résume la théorie de l'ordre légal qui sert d'infrastructure à sa théorie politique. Mais, à toutes les différentes étapes de sa carrière, Gazālī avait été amené a s'intéresser au problème politique; au problème de la dévolution, del la nature et de la finalité du pouvoir, et par suite, à celui des rapports de la religion et de l'État.[24]

This observation should be read together with Marshall Hodgson's observations of al-Ghazālī's social goals. He argues that as a *sūfī* al-Ghazālī developed a perception of truth akin to that of the prophets and consequently has attempted 'to infuse the religious forms of his time with spiritual life."[25] In this attempt, says Hodgson,

> the work of al-Ghazālī may be said to have given a rationale to the spiritual structure that supported society under the decentralized political order, the order that resulted in part from the work of his patron Niẓām al-Mulk.[26]

In the light of this observation, *al-Mustaṣfā* can be viewed as the juridical component of the reformist al-Ghazālī. In the *Iḥyā'*, for instance, he already recognised that the role of law and lawyers was to counsel rulers on sound forms of governance.[27]

Theology and Law in *al-Mustaṣfā*

On introducing *al-Mustaṣfā* and its objectives, al-Ghazālī extols the merits of legal theory citing it as the 'most noble of sciences which combines reason (*ʿaql*) and transmitted report (*samʿ*) with informed opinion (*ra'y*) and revelation (*sharʿ*)."[28] In order to explain the significance of this description, he provides a typology of the different types

---

[24]Henri Laoust, *La Politique de Ġazālī*, (Paris: Librarie Orientaliste Paule Geuthner, n.d.), 182. Translation: "*Al-Mustaṣfā*... sums up the theory of legal order which serves as a structure for his political theory. But at all the stages of his career, al-Ghazālī could not avoid the political issues, such as the issue of the devolution of power, the nature and ends of power which led to the issue of the relationship between religion and the state."

[25]Hodgson, *Venture*, 2:190; Yūsuf al-Qarḍāwī, *al-Imām al-Ghazālī Bayna Mādiḥīhī wa Nāqidīhī* (Mansura, Egypt: Dār al-Wafā', 408/1988), 15 suggests that al-Ghazālī attempted to establish a bridge between law and Sufism.

[26]Hodgson, *Venture*, 2:190.

[27]al-Zabidi, *Itḥāf*, 1:153-55.

[28]*Mu*, 1:5.

of knowledge or sciences (*ʿulūm*). His primary distinction is between rationally derived knowledge or science (*ʿulūm ʿaqliyya*), such as medicine, geometry and mathematics, and religious knowledge or science (*ʿulūm diniyya*), such as the exegesis of the Qur'ān, the study of tradition and law.[29]

Each type of knowledge is further subdivided into the epistemological categories of universal (*kullī*) knowledge, and particular (*juz'ī*) knowledge. Among the religious disciplines, only philosophical theology is universal.[30] All the other religious disciplines; law (*fiqh*), legal theory (*uṣūl al-fiqh*), exegesis (*tafsīr*), traditions (*ḥadīth*), Sufism (*ʿilm al-bāṭin*) are epistemologically speaking, particular (*juz'ī*).[31]

Al-Ghazālī further maintained that, in the hierarchy of religious sciences, theology was not only the most universal of all disciplines, but that the role of the dialectical theologian (*mutakallim*) eclipsed the role of the legal theorist (*uṣulī*).[32] He saw the role of the theorist as being limited, to a specific type of indicants only related to revealed legal determinants (*adillat al-aḥkām al-sharʿiyya*). Conversely, the theologian was free to evaluate any proof.[33] Among the religious sciences, al-Ghazālī regarded dialectical or philosophical theology as the "highest ranking science," because it was the science that provided the epistemological foundations of *all* the religious sciences, what he called "the point of departure" (*idh minhu al-nuzūl*).[34] Here was one of the points at which al-Ghazālī

---

[29]Ibid.

[30]Ibid.; Makdisi, "Ashʿarī and Ashʿarites (1)," 66, says that the Shāfite al-Subkī also argued the superiority of *kalām* over *fiqh*. Al-Subkī in an interpellation of a statement by Ibn Surayj comes close to saying that law cannot go beyond *kalām* (and therefore superior to it); for it is *kalām* which goes beyond law. In the hierarchy of religious sciences, *kalām* occupies the higher level.

[31]*Mu*, 1:5.

[32]Ibid.

[33]Ibid.

[34]*Mu*, 1:7: *"fa al-kalām huwa al-ʿilm al-aʿlā fī al-rutbati."*

unambiguously asserted the primacy of theology with respect to legal theory. In other words, theology had an apodicticity - the status of 'origin' of all knowledge. In al-Ghazālī's view, theology was something of a *metalangue* from which all truth emanated.

To leave us beyond doubt of this, al-Ghazālī provided an illustration. When one accepted the *bona fides* of a prophet, it was theology that provided the first principles to establish the veracity (*ṣidq*) and argumentative validity (*hujja*) of statements made by the Prophet.[35] Hence all disciplines, traditions, Qur'ān, or law, "are all particular (*juz'ī*) in relation to [the epistemological authority of] *ʿilm al-kalām*."[36] This is another way of saying that *kalām* relativises all disciplines, and we can see that theology acquired the status of an oracle and it became, in and of itself, the oracle of truth.

After stressing the primacy of theology, al-Ghazālī introduced a rhetorical caveat in the form of a question and answer in order to illustrate the need for limiting the use of theology. He asked:

> Does that [distinction between universal and particular sciences] presuppose that it is a precondition for a legal theorist (*uṣūlī*), jurist (*faqīh*), exegete (*mufassir*) and traditionist (*muḥaddith*) to have proficiency in philosophical theology (*ʿilm al-kalām*)? For surely, after having dispensed with the highest universal (*al-kullī al-aʿlā*) how will it be possible to condescend to the lowest particular (*al-juz'ī al-asfal*)?...Our response is that it is not a precondition [to be proficient in *kalām*] to be a legal theorist (*uṣūlī*) ... It [*kalām*] is indeed a precondition in order to qualify as a master-scholar in several disciplines (*ʿālim muṭlaq*) ... for surely there is not a single one of the particular disciplines, but their fundamental principles are accepted on the basis of the imitation of authority (*taqlīd*) ...[37]

The apodictic status of *kalam* in al-Ghazālī's legal theory vindicates the claim of some modern scholars that legal theory was philosophical theology. While this may not be so

---

[35]*Mu*, 1:6.

[36]*Mu*, 1:6-7, *"fa idha al-kalām huwa al-mutkaffil bi ithbāt mabādi al-ʿulūm al-diniyya kullihā, fahiya juz'iyyu bi al-iḍāfa ila al-kalām."*

[37]*Mu*, 1:7.

for all types of legal theory, al-Ghazālī's legal theory could not be dislodged from theology.

Al-Ghazālī realised a greater value for theology in the *al-Mustaṣfā* than he did in the *Mizān*. Contrasting the role of the legal theorist (*uṣūlī*) and theologian (*mutakallim*), he said that the theorist's subject matter only dealt with the sources of the *sharī*^{c}*a* while the theologian's domain was the "study of the generalities of things," namely, everything that "existed" (*mawjūd*).[38] The existents were then subdivided into further categories of eternal (*qadīm*), created or adventious (*ḥādith*), substance (*jawhar*) and accidents (^{c}*arḍ*). Theology can prove that the eternal (*qadīm*) does not multiply and is indivisible, unlike created (*ḥādith*) substances. Theology can, by means of argumentation, provide those criteria for the category of eternal, necessary essences (*awṣāf*), certain matters (*umūr*) and determinants (*aḥkām*).[39] Using negative proofs, he said that certain determinations (*aḥkām*) were neither necessary nor impossible in their application to the eternal. The task of the theologian and the role of reason (^{c}*aql*) ends at the point when one can prove that it was possible to attribute acts to the eternal.[40] Reason, he said, could prove the truthfulness of the Prophet, accept his teachings about God and the day of Judgement, but it cannot perceive these ideas on its own, nor can it declare them to be impossible.

> The *shar*^{c} [revelation] can *supplement* what the intellect lacks in independent perception. Hence, the intellect cannot on its own perceive that obedience is the cause of happiness in the hereafter, or that sin is the cause for damnation. Nor can it determine the impossibility [of these aforementioned things] either... (italics mine)!.[41]

[38]*Mu*, 1:5.

[39]*Mu*, 1:6.

[40]Ibid.

[41]Ibid.

After whetting his reader's appetite in the few paragraphs, al-Ghazālī then launched into a critique of some legal theorists who had been "overwhelmed by their personal obsession with theology" (*li-ghalabat al-kalām ʿala ṭabāʿi*), or were preoccupied with issues of grammar or positive law to such an extent that it had intruded into their writings on legal theory.[42] He singled out the Hanafi legal theorist, Abū Zayd al-Dabūsī (d. 430/1038), criticising him for introducing elements of positive law (*fiqh*) in his treatises on legal theory.[43]

These prefatory remarks suggest that al-Ghazālī was paving the way for his own propensity towards theology in the study of legal theory. His reliance on theology plays more than just a secondary role. Nevertheless, he successfully introduces this discipline by the artful use of the technique of deflection. While he draws the reader's attention to those theorists who insert theological, grammatical and positive law overlays in their presentations of legal theory, he deflects the attention from his own forays into theological issues in *al-Mustaṣfā*. Aware of his paradoxical position on this matter, al-Ghazālī maintained that his digression into theology while discussing legal theory was a partial one. After some elaborate prefacing, al-Ghazālī admits that he will not make the radical departure of purging theology from legal theory (*uṣūl al-fiqh*) discourses because "weaning from what is familiar is hard to take and people tend to shun the novel."[44]

He listed several theological issues in a hierarchy of their importance and their relevance to legal theory.[45] Legal theorists were justified in using the theologians' definitions of knowledge (*ʿilm*), discursive or speculative thought (*naẓar*), and proof

---

[42]*Mu*, 1:10.

[43]Ibid.

[44]Ibid.

[45]Ibid.

(*dalīl*), but they could not borrow their use of demonstrative proofs (*iqāma't al-burhān*).[46] The reason for this inter-disciplinary borrowing was that the theologians' definitions assisted the legal theorists in their conceptualisation. Terms such as "consensus," "discursive thought" and "proof" were already used in theology and there was no need to re-invent them for the purposes of legal theory, al-Ghazālī explained.[47]

In the same way that the proof-value (*ḥujjiyya*) of consensus and syllogism (*qiyās*) properly belong to the discipline of legal theory, discussion of these becomes unavoidable in the study of positive law (*fiqh*). He made the point of telling the reader that these debates had unfortunately been "dragged" (*ijrār*) in for the purposes of rebuttal only, not for substantive discussion. For instance, theology was "dragged" into legal theory in order to rebut those who opposed (*munkirūn*) the proof-worthiness (*ḥujjiyya*) of knowledge (*ʿilm*) and discursive thought (*naẓar*).

Al-Ghazālī's detailed apology for employing theological arguments suggests an awareness of the `politics' of theology and its relationship with law within Ashʿarism. Through a variety of narrative strategies and phrase regimes he attempted to fulfill the ends of his own discourse in *al-Mustaṣfa*. He wanted to tread a cautious middle path between pro-*kalām* Ashʿarism and the anti-*kalām* factions, although he was more inclined to pro-*kalām* Ashʿarism.[48] His method of achieving this goal was to use the technique of dialectical irony: negative towards *kalām* but also employing it. The effect of this technique was ambiguity and dissimulation. One reason for blurring his attitude towards theology was to make his work acceptable to the diverse audiences for whom he was writing. One must allow for the fact that as someone who had mastered the discourse of dialectical theology, al-Ghazālī was also, to some extent, a prisoner of the discipline. In

[46]Ibid.

[47]Ibid.

[48]Makdisi, "Ashʿarī and Ashʿarites (1),".66.

the *Mizān* he spoke as a self-professed *ṣūfī* who did not even wish to entertain the relationship between Sufism and theology. In *al-Mustaṣfā* he not only transgressed boundaries, he also stated emphatically that theology was the universal of which Sufism, along with legal theory were both subsidiaries. Indeed, indirectly he was saying Sufism was founded upon the primary principle of *kalām*. It is possible that the al-Ghazālī of *al-Mustaṣfā* was again revising his position on theology, law and the other religious sciences and his revisionist *cum* reformist stance may well have been the reason for the production of a major work on legal theory, prefaced by discussions on logic and theological principles. This gives ample scope for speculation as to whether al-Ghazālī was continually attempting to revise his canon, at the same time as re-writing his intellectual [auto]biography.

Designing 'Roots' (*Uṣūl*): Structure of *Uṣūl*

The contemporary Egyptian philosopher, Ḥasan Ḥanafi, has argued that legal theory generally had a trilateral structure, representing three dimensions of Muslim conscience, 'les trois dimensions de la Conscience."[49] These three dimensions are: the historical conscience (*la consience historique*), the eidectic conscience (*la conscience eidetique*) and the practical conscience (*la conscience active*). The historical conscience (*al-shuᶜūr al-ta'rīkhī*), according to Ḥanafī, constitutes the objective data of legal theory, namely the revelation, tradition (*ḥadīth*), consensus and analogy.[50] This dimension provides for the historicity of the data and involves its verification and extent of reliability. The eidectic conscience (*al-shuᶜūr al-ta'ammulī*) is the reflective process of understanding, analysis and theorisation which constitutes the core dynamism and method

---

[49]Ḥassan Ḥanafī, *Les Methodes d'Exegese: Essai Sur la Science des Fondements de la Comprehension ᶜIlm Uṣūl al-Fiqh* (Le Caire: Le Conseil Superieur des Arts, des Lettres et des Sciences Sociales, 1385/1965), 5.

[50]Ḥasan Ḥanafī, "ᶜIlm Uṣul al-Fiqh," in *Dirāsāt Islamiyya* (Cairo: Maktaba al-Angelo Misriyya, n.d.), 69-103.

of the discipline. The main focus of the eidectic conscience is the linguistic debates and juristic syllogism. The practical conscience (*al-shʿūr al-ʿamalī*) is the search for the legal determinant and its application and provide the solution to existential problems. Under this rubric, all the elements related to the search for the practical solution, such as the qualification of the jurist (*mujtahid*) are addressed.

Ḥanafī's method, which shows influences of French structuralism, is innovative and serves as an effective heuristic device. Like all heuristic devices it suffers the limitations of universalism, essentialism and reductionism. The differences and varieties of legal theory which could possibly modify this model needs to be accounted for in a comprehensive theory. Any model must show sensitivity to historical lacunae which influence the discipline to which it refers. Nevertheless, Ḥanafī presents legal theory as a product of a variegated Islamic conscience and this also discloses the language of moral philosophy in Islam. In this sense his thesis of legal theory as "conscience" is supported by Makdisi's studies of the history of legal theory. Makdisi concluded that legal theory had taken over the role which theology (*kalām*) used to play in Muslim discourse and that in future it will be the legal theorists who will determine Islamic theology rather than the theologians (*mutakallimūn*) themselves.[51] Ḥanafī and Makdisi have used different processes - philosophy and history - but both have arrived at the conclusion that legal theory is a manifestation of Islamic moral philosophy.

Structure of 'Roots' (*Uṣūl*) in *al-Mustaṣfā*

The structure of *al-Mustaṣfā* is a quadrilateral one, in which each lateral is an axis (*quṭb* lit. pole pl. *aqṭāb*). Al-Ghazālī's selection of the metaphor was spontaneous in al-Ghazālī's writing because he was preoccupied by Sufism (*taṣawwuf*) at that stage of his

[51]Makdisi, "Juridical Theology," 46.

life.[52] Each of the poles formed part of the grid or structure of his legal theory. In the following paragraph, the reader should also note the additional metaphors employed to elaborate the structure of his jurisprudential framework.

The first axis (*quṭb*) discusses the determinant (*ḥukm*) which he described as the "harvest" or "fruit" (*thamra*). The second axis was "the bearer of the fruit" (*al-muthmir*). The third axis discusses the methods of utilization or, "the methods of growing fruits" (*ṭuruq al-istithmār*) and, the fourth axis deals with the "fruitgrower" (*al-mustathmir*).

In addition to Sufism's highest manifestations, the four axes are suggestive of the aesthetic metaphor in al-Ghazālī's repertoire of legal theory. His intense use of botanical terms permeates his reflections on legal theory. The objective of legal theory is to develop a sound and rationally defensible method by which determinants (*aḥkām*) can be derived from the primary sources of law, namely the Qur'ān and Sunna, and from the secondary sources by means of consensus (*ijmā'*) and juristic syllogism (*qiyās*). In effect legal theory is both the method and theory which informs the jurist. Its productive capacity is effectively captured in the botanical metaphors.

In addition to the use of botanical and axial metaphors, al-Ghazālī pursues a logical division of his categories. Before discussing the axes in detail he provides an introduction (*muqaddima*) to logic. Thereafter, he subdivides the content into component (*fann*), chapter (*bāb*), part (*faṣl*) and controversy or problem (*mas'ala*), all of which are structures he borrows from logic. At times these subdivisions are preceded by one or two prefaces and a conclusion. Occasionally, he announces that a component (*fann*) will comprise a "book" (*kitāb*), in which he provides greater detail. Sometimes, a component will be accompanied by a division (*qism*) or several divisions and sometimes there will be

[52]F. de Jong, "al-Kuṭb," in *Encyclopaedia of Islam* 2nd ed.

an explanation (*bayān*) at the end. Al-Ghazālī is not always consistent in his classification which makes the reader unsure about the value of the classification. At times, he uses terms such as division (*qism*) and part (*faṣl*) interchangeably which lends a certain amount of indeterminacy to the categories. Ironically, it was precisely because he wished to limit indeterminacy that al-Ghazali insisted on the use of logic in legal theory.

Logic and Legal Theory

The introduction to logic in *al-Mustaṣfā* was privileged by al-Ghazālī:

> This [introduction] is not part of legal theory, nor [part of] any of its special preliminaries, but more than that: it is the introduction to all knowledge. And whosoever is not fortified with this introduction, then no validity can be ascribed to his [her] knowledge as a matter of principle.[53]

But his artful ambiguity towards logic remained. Immediately following this quotation he said:

> Whosoever does not wish to transcribe this introduction should then start the book from the first axis (*quṭb*), for that is indeed the beginning of *usul al-fiqh* proper.[54]

However, immediately after that, he added:

> In the same way that speculative knowledge is dependent on this introduction, so does legal theory [also depend on it].[55]

In the introduction to logic, al-Ghazālī is consistently ambiguous in his assertions, retractions, apologies, and his dependence on logic. This undoubtedly has major implications on the earlier positions he had adopted vis-a-vis philosophy, theology and the rational sciences. He approves of logic but disapproves of philosophy and philosophers, once again demonstrating his inconsistency, since both disciplines are part of the

---

[53]*Mu*, 1:10.

[54]Ibid.

[55]Ibid.

controversial 'foreign sciences'. But there is also considerable debate among students of al-Ghazālī as to whether he rejected philosophy entirely or only some aspects of it.[56]

The introductory treatise on logic contains an Islamising rhetoric, where he uses illustrations from theology and positive law (*fiqh*) to support his arguments on logic. The origins of this logic have Aristotelian-Stoic roots in Greek philosophy.[57] He attempted some form of Islamisation of Greek logic by fusing it with Islamic elements. In doing so, he avoids the pure abstraction of Greek logic and tries to give it concrete expression. For instance, he took the Greek syllogism and compared it to the inductive analogy (*al-qiyās al-istidlālī*) of legal theory by showing the resemblance between the two methods.[58] Similarly, he related certain aspects of demonstrative proof (*burhan*) to inductive certainty (*al-istidlāl al-yaqīnī*). He thus adapted the forms of Greek logic, and by providing illustrations from Islamic law and quotations from the Qur'ān, demonstrated that Islamic sources could also be used to support logic.

But al-Ghazālī had greater ambitions for logic and legal theory in *al-Mustaṣfā*. His purpose was to create a coherent and standard language in Arabic that would serve the object of establishing epistemological certainty (*yaqīn*) within the structure of language itself. For this reason, he reorganised the basic and hitherto incontrovertible premises of the prohibited, permitted, indifferent, legal causation (*ʿilla*) and the issues of language, into an integrated discursive system which would co-ordinate meaning, certainty and language into a unified system. Both the language of logic and the language of revelation would

---

[56]Abū al-ʿAlā ʿAfīfī, "Athar al-Ghazālī fi Tawjīh al-Ḥayāt al-ʿAqliyya wa al-Rūḥiyya fī al-Islām," in *Abū Ḥāmid al-Ghazālī*, 736; Ḥasan al-Sāʿatī, "al-Manhaj al-Waḍʿī ʿinda al-Imām al-Ghazālī," in *Abū Ḥāmid al-Ghazālī*, 433-447 passim

[57]Wael Hallaq, "Logic, Formal Arguments and Formalization of Arguments in Sunni Jurisprudence," in *Arabica*, 38 (November 1990): 320.

[58]Rafīq al-ʿAjam, *al-Manṭiq ʿinda al-Ghazālī fī Abʿādihī al-Arastuwiyya wa Khuṣūṣiyyatihi al-Islamiyya*, (Beirut: Dār al-Mashriq, 1989), 304.

therefore become standardised inferential orders expressed through the Arabic language. This will be discussed in greater detail in the next chapter. But first, to grasp the depth of the reliance of legal theory on language discussions, an overview of the contents of al-Ghazālī's legal theory would be in order.

The Four Axes (*Aqṭāb*)

The first axis deals with the determinant or assessment, called the *ḥukm*.[59] Although the "fruit" of any labour normally comes at the end of the process, in al-Ghazālī's structure it is discussed first. In modern disciplines, following the model of a factory, one would discuss the preliminary phases of any process in an order of priority first, and then address the yield of the process. The *ḥukm* is treated first, precisely because of the fact that legal theory is concerned with the product of the legal process. It obtains prominence within al-Ghazālī's metaphoric discourse. In it he discusses four components (*fann* pl. *funūn*) of the determinant (*ḥukm*): its essential reality (*haqīqa*), divisions, constituent elements (*rukn* pl. *arkān*) and the process by which a determinant manifests itself.

The second axis investigates the indicants (*adilla*) of the determinant, which are the four textual sources (*uṣūl*) of the law. The first source is the Book of Allah. Here al-Ghazālī's primary discussion is embodied in the "book of abrogation" (*kitāb al-naskh*) which has two chapters (*abwāb*) and a conclusion. Several controversies (*masā'il*) are addressed, the main ones being the definition, the essential reality and the evidence of abrogation, as well as the constituent elements and conditions for the abrogation of the revealed text. It concludes with a brief history of the topic. In his treatment of the second source, namely the tradition of the Prophet, al-Ghazālī does not specifically focus on any

[59]The Arabic word *ḥukm* cannot be reduced to one translatable phrase in English. Therefore, I use the words "determination," "assessment" and "rule," interchanging when the contextual sense requires such adaptation.

particular aspect of the discipline of *ḥadīth* studies. The main thrust here is concerned with guaranteeing the epistemological propriety of prophetic narratives. Similarly, in his treatment of the third source, consensus (*ijmāᶜ*) he also deals mainly with epistemological issues. In the fourth source, attention is focussed on 'the indicant of reason" (*dalīl al-ᶜaql*) and the presumption of continuity (*istiṣḥāb*).

The third axis consists of a preface (*ṣadar*), an introduction and three components (*funūn*). The preface emphasizes that 'this axis is the central pillar of the discipline of *uṣūl*."[60] The first component deals with sentences and methods of deriving indicants from phrases; the second deals with words, their meanings and inferences; and, the third with how to derive determinants (*aḥkām*) from words which includes detailed discussions on juristic analogy (*qiyās*) and its variants.

The fourth axis addresses the jurist in three components (*funūn*). The first deals with the question of creative and independent juristic discretion (*ijtihād*); the second deals with the need to follow authority (*taqlīd*) and juristic inquiries (*istiftā*); and, the third deals with the method of weighing and preferring (*tarjīḥ*) competing juristic viewpoints.

The four axes deal effectively with the issue of the legal Determinant (*ḥukm*), the Text (*uṣūl*), meaning the four sources, the Method which involves the language and hermeneutic debates and, the jurisdiction of the Jurist (*mujtahid*). But the structure of al-Ghazālī's legal theory does not only serve as a convenient vehicle for presentation, it is inundated with metaphorical elaborations, next to be explored.

---

[60]*Mu*, 1:315.

Structure as Ideology: The Aesthetic Ideology

In addition to his mastery of the disciplines of theology, philosophy and logic, the author of *al-Mustaṣfā*, was well versed in Sufism. In his description of the quadrilateral structure of legal theory around four axes (*aqṭāb*), he had borrowed from the imagery of Islamic mysticism or Sufism.[61] In mysticism, the axis (*quṭb*), is the head of the saintly hierarchy, known as the axis of axes (*quṭb al-aqṭāb*). In this framework the *qutb* is the high-point in the numinous hierarchy. Corbin has shown that this was essentially a Shī'ī idea appropriated by Sunnī mysticism.[62]

Employing the *sūfī* metaphor indicates hierarchy, transcendence, hidden axes and ontological space as being the key symbols of the legal aesthetics of al-Ghazālī. He supplemented the mystical metaphor with an aesthetic metaphor borrowed from botany. Each element of the aesthetic metaphor is then disaggregated into its component parts thus providing a composite and coherent picture, justifying the use of the metaphor of the 'tree." The use of the metaphor cannot simply be dismissed as serving a heuristic function. The double metaphors of mysticism and aesthetics, are suggestive of a deeper imagination and ideology at work in al-Ghazālī.

There may be a reason why al-Ghazālī employed aesthetics, botany, the theory of art, and the appreciation of the beautiful, to illustrate his model of legal theory. In fact, the very etymological construction of the discipline, 'roots of fiqh" (*uṣūl al-fiqh*) was conceived in the metaphor of the tree which gave rise to such often-used terms as 'roots," (*uṣūl*) and 'branches," (*furū'*) in Islamic law. This provides this author with a further incentive to analyse the role of the aesthetic metaphor in law at large.

---

[61]F. de Jong, "al-Ḳuṭb."

[62]Ibid.

Paul de Man explained that "aesthetic ideology" is most effective in its bid to "reconcile the various binary oppositions that bifurcate modern society and culture."[63] Although de Man is talking about modern society, his reflections are valuable because they can be used to explain how aesthetic ideology was used and the ways in which it has been accommodated by such various disciplines as politics, ethics and hermeneutics. The aesthetic ideology conveniently lends itself to a sense of harmony, or a law of totality. Aesthetic contemplation could lead to a harmonising of disparate faculties, cognitive fields and activities, and

> ... as a normative discourse it promises a future Utopia in which all remaining conflict, dissension and value disagreements will be transcended in a new organic community. [64]

De Man believes that, by resorting to aesthetic ideology or aesthetic imperialism, one tries to avoid the problem of language. As Norris put it, the aesthetic ideology claims to put together the sensuous, the conceptual and the legal. This allows the illusion of naturalism and falsely promises to overcome the "obstinate, resistant signs of textual difference by assimilating the language to a model of transcendental, unitary thought and perception."[65] De Man's strategy against this persuasive ideology is an ascetic, close reading of the text. He pays extreme attention to textual detail, rhetorical and linguistic arrangements, and shows a distrust of grand theories of interpretation. He is attentive to the aesthetic tone of the text, in a bid to keep the aesthetic within its proper domain of art and "deprive it of its fraudulent assertion of epistemological rigour or ethical and political propriety."[66]

---

[63]C. Douzinas et al., ed., *Postmodern Jurisprudence: The Law of Text in the Texts of Law* (London: Routlege, 1991), 59.

[64]Ibid.

[65]Christopher Norris, *Paul de Man: Deconstruction and the Critique of Aesthetic Ideology* (New York: Routledge, 1988), 38.

[66]Douzinas et al., *Postmodern Jurisprudence*, 60.

A close reading of the text of *al-Mustasfā* manifests the great effect to which al-Ghazālī employed the aesthetic ideology in law. My hypothesis is that he did so to harmonize the disparateness between ontology and epistemology. For indeed, in legal theory, he found not only a statement of being - namely a moral philosophy - but also a theory of knowledge, epistemology. Generally, legal theory is either considered to be epistemology by proponents of *kalām* or hermeneutics in the view of traditionalists.[67] Al-Ghazālī seems to adopt the view that legal theory can encompass both concurrently.[68] An effective way of negating this difficulty without actually having to deal with the epistemological problem of saying that legal theory combines both hermeneutics and epistemology, is to employ an ideological framework that blurs these distinctive differences and gives legal theory a semblance of unity.

In al-Ghazālī's quadrilateral structure, each of the four laterals in his description of legal theory occupies an autonomous sphere since each is an axis (*qutb*). While the Determinant, Text, Method and Jurist on their own have independent frames of reference when dealt with separately, there is little evidence of their intertextuality. The botanical metaphor does, of course, give a semblance of unity and wholeness. The axial metaphor performs a different function. The main issue that the aesthetic ideology avoids is the recurring question of language, given the beguiling effect of the metaphor. Nietzsche described the figurative drive as the impulse towards the formation of metaphors. Like all ideas that originate through trying to equate the unequal, a metaphor also attempts to establish an identity between dissimilar things. Later, Nietzsche called this figurative drive, the unconscious "will to power" or will to truth.

---

[67]Nabil Shehaby "The Influence of Stoic Logic on al-Jassās's Legal Theory," in *The Cultural Context of Medieval Learning*, ed. John Emery Murdoch and Edith Dudley Sylla (Dordrecht: D. Reidel Publishing Company, 1875), 80-83 for discussion that followed after the reading of the paper.

[68]Shehaby, "Stoic Logic," 82 for his comment.

> What, therefore, is truth? A mobile army of metaphors, metonymies, anthropomorphisms; truths are illusions of which one has forgotten that they are illusions ... coins which have as their obverse effaced and now are no longer of account as coins but merely as metal. [69]

Aesthetic imperialism promises to overcome 'the obstinate, resistant signs of textual difference by assimilating language to a model of transcendental, unitary thought and perception."[70]

The aesthetic ideology in the most mature of al-Ghazālī's legal writing requires an explanation. In the sections dealing with the Determinant, Text and Method, al-Ghazālī followed the conventions charted by his predecessors. There could, however, be some plausible explanation as to why he invented his own method of dealing with the Jurist as a separate axis. Firstly, I wish to rule out the opinion that it was purely accidental and unmeditated. The axis on the Jurist is too central to the structure and texture of the work to be deemed accidental. A plausible explanation here is that if al-Ghazālī was to examine the issue of the Jurist under the rubric of Method, it would compel the Jurist to conform to the historical strictures of the discipline. The discussion on Method focuses largely on linguistic issues, rhetorical and logical forms that had been produced by previous jurists, linguists, and grammarians. By discussing the Jurist separately, the very 'act' of separation infers that the Jurist occupies an independent space and allows him/her an opportunity to experiment creatively in the discipline. In providing the Jurist an autonomous space, al-Ghazālī allowed a slight loosening of the grip of the methods used previously to discuss the discipline of legal theory. The axial metaphor lends itself to this independence and autonomy.

---

[69]Friedrich Nietzsche, "On Truth and Falsity in their Ultramoral Sense," in *Early Greek Philosophy and Other Essays*, trans. Maximilian A. Mugge (London: T.N. Foulis, 1911), 180.

[70]Norris, *Paul de Man*, 38.

In effect, al-Ghazālī subtly dissented from the conventional theorisation of legal theory by asserting that his theory was based on four primary axes. Viewed from another angle, this structuring could be seen as an innovative activity. But he effectively hid his innovation and dissent by employing the enchanting metaphor of botany and gardening, mediated by the aesthetic ideology of the primary axes. The aesthetic ideology was useful in trying to create an impression of naturalism of both wholeness and independence. The ideology provided the foil that there was a unitary and undifferentiated perception in the approach to Islamic legal theory.

Conclusion

In this chapter, I undertook a 'close reading' of some of al-Ghazālī's texts in order to ascertain the interaction of law and theology. The central texts of religious traditions, and *al-Mustaṣfā* is such a one, needs to be read with an adequate sense of their full rhetorical complexity. In order to do this, says Derrida, one requires prudent, differentiated, slow and stratified readings.[71] In my close reading, I have searched for the rhetorical techniques which were employed in the service of more important, but less observable interests.

It is clear that despite his protestations to the contrary, al-Ghazālī could not avoid the temptation of theologising his legal theory. Theology assures its hegemony over other discourses by preconstructing the discourse of legal theory as part of the rhetorical practice. Furthermore, in my opinion, al-Ghazālī cautiously and artfully avoided unnecessary confrontation with the politics of the Islamic disciplines of the time, by deliberately ensuring that the descriptive title of *al-Mustaṣfā* itself was ambiguous - making it difficult to establish whether it was a work on legal theory (*uṣūl al-fiqh*) or juro-moral theology (*uṣūl al-dīn*).

---

[71]Norris, *Paul de Man*, 33.

Al-Ghazālī employed a variety of writing and rhetorical techniques in order to unify the discourse of legal theory through the use of metaphors, organisation of material, structuring the discipline, and an insistence on rigidly following logical methods. All this he did in order to give coherence to what he would like to project as a system of thinking, universal, autonomous, independent of context, monologic and distanced from the struggle for social values.

Nevertheless, a close reading suggests that despite his attempts to stabilise the edifice of legal theory with theology (*kalām*) and logic, it did not necessarily dissolve the ambiguities and uncertainties. Moreover, al-Ghazālī tried to cloak his intellectual innovations and dissent in legal theory in the aesthetic metaphor. The minute analysis of the latter discloses more than what it hid and destabilised, against al-Ghazālī's best intentions.

Chapter 4

Language and the Rhetoric of Ambivalence

Introduction

The third axis (*quṭb*) of *al-Mustasfā* examines the substantive issues of language in legal theory. Language constitutes both the epistemological postulates and the hermeneutical force of the discipline of legal theory. Al-Ghazālī went to great lengths to explain the "postulate of language" (*mabda' al-lugha*).[1] In this chapter language will be treated as a discourse and not as isolated units.[2] The legal philosopher Villey observes that:

> ... law manifests itself to us only in forms of discourse ... discourses subject to the laws of a language. Everything which jurists and the legislator utter is regulated, conditioned and channelled by this language. It is not sufficient to say that language is their instrument, without adding that this instrument like all techniques, dominates them. Language is a *servant-maitresse*, and in reality the language is itself knowledge; its vocabulary and syntax are a mode of thinking about the world, of carving out a structure of the world; of our science, our language constitutes the first half (italics mine).[3]

The examination of al-Ghazālī's treatment of language will follow the thrust of Villey's observations, especially in exploring the "servant-master" role that language plays in legal discourse. The degree to which language constitutes knowledge and a way of "thinking about the world" will also receive special attention.[4] We need to understand

---

[1] *Mu*, 1:318.

[2] Bernard Weiss, "Language and Tradition in Medieval Islam: the question of *al-ṭarīq ila ma'rifat al-lugha*," *Der Islam*, 61 (1984): 91.

[3] M. Villey, "Preface," symposium on "Le Langage du Droit," *Archives de Philosophie du Droit*, 19 (1974): 1-5.

[4] Ibid.

how language, the acts of language and the characters and the communities which were created operate in al-Ghazālī's legal theory.

This need to understand how we construe ourselves within our environment is not viewed as part of the common understanding of language. Rather, language is treated as a vehicle or a container which transmits messages without ever becoming involved in the transmission process itself. Our fundamental use of language is propositional in character, depending 'for its existence on chains of reasoning, deductive or inductive in character, that are external to itself and context."[5] This understanding of language has as its premise in the idea that *everything* is capable of being recast; is capable of being translated into any language and that our knowledge is universal, transparent and neutral, independent of what is happening beyond our own doorstep, only existing in the unconsciousness of the reasoning mind. The modern discipline of Islamic studies, and more so, the academic study of Islamic law and legal theory generally ascribe to the assumptions described above.

But there is another way of thinking about language. According to Wittgenstein 'to imagine a language means to imagine a form of life."[6] This description does not paint language in neutral or transparent tones, but imparts to it its own force, vibrancy and colour. 'There is no non-linguistic observer, no non-linguistic observed."[7] This is a way of imagining language not as a set of propositions but as a

---

[5]Boyd White James, *Language as Translation: An Essay in Cultural and Legal Criticism* (Chicago & London: University of Chicago Press, 1990), x.

[6]Ibid., ix.

[7]Ibid., xi.

'repertoire of forms of action and of life."[8] Also, according to Boyd White, "our purposes, like our observations, have no pre-lingual reality, but are constituted in language - in this sense they too are lingual in nature."[9] This sense of language denies the claim of logic and rationality that our words have identical meaning each time they are used. Much of the meaning of words is derived from the tones, the inflections, and gestures used, as well as context in which they are uttered. In this way, "we can imagine languaging as a kind of dance," says Boyd White, "a series of gestures or performances, measured not so much by their truth-value as by their appropriateness to context."[10]

Without doubt, the two versions of language described above cannot exist in pure forms in everyday life. Both are at work in imperfect relation to each other. Sometimes, it may be necessary to act as if language were transparent, such as when giving street names, ascertaining a day of the week, or a calendar month. But we also know that such forms of languaging are reductive, and like all such systems will become pathological unless we can be sure of what has been left out. Therefore, we have to shift the focus of our attention so that we come to see language as having its own reality and see its forms as forms of life.

In the study of Muslim legal theory, language is generally treated as being propositional, transparent and neutral. Perhaps now is the time to view the language of legal theory as a form of life and action, as well as listening to what it tells us about

---

[8]Ibid.

[9]Ibid.

[10]Ibid., xii.

the ambience of both the author and the discipline. Viewing language as a discourse is one way of discovering the hidden actions of language-use.

Legal Theory as Discourse and Rhetoric

In the broadest and loosest of terms, the concept of discourse can be applied to any sequence of utterances that forms a sentence or a more complex structure. More sharply defined, the processes that intervene and determine the relationship of a language to the formulation of utterances are called discursive processes.[11] The relation of bodies of knowledge to social practice and structure, is called a discursive formation. The study of Islamic legal theory and the field of discourse analysis is as yet unknown. At both the level of discursive process and discursive formation, this study challenges the hermetic security of the meta-langue of Islamic law, namely legal theory.

De Man took J. L Austin's (d. 1960) description of utterances as being either constative or performative, and had applied this typology to legal texts in the Western tradition. A constative is a descriptive statement capable of being analysed in terms of truth values.[12] Performatives cannot be analysed in terms of truth values. A performative is a sentence or utterance where an action is performed by virtue of the sentence being uttered, like "I marry you...," "I repudiate you," "I promise." Legal texts, says de Man, exist in a permanent state of suspension between "constative" and "performative" modes which appear to stipulate precisely the terms by which it should

[11]Peter Goodrich, *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis* (London: Macmillan Press, 1987), 77-78.

[12]In Arabic grammar such a sentence is called a *jumla mufida*.

be understood.[13] At the same time, it also attempts to "authorise" future readings, revisions and extensions which it cannot determine in advance, "but which none the less provide its only source of retroactive authority."[14] De Man's observations are equally applicable to Muslim legal texts.

There is a twofold deconstructive process at work in the text. On the one hand, there is a rhetoric of tropes at work, the effect of which is to subvert or render undecidable any utterance which apparently seems to be couched in constative terms.[15] On the other hand there is

> a repetitive, quasi-mechanical "grammar" of figural drives and substitutions which makes it impossible for language ... to maintain the delusion of authentic, self-present meaning.[16]

Rhetoric and grammar continuously "undo" each other. Rhetoric undoes grammar and logic by creating the possibility of undecidable utterances in terms of propositional content. Similarly, grammar undoes rhetoric since tropes have an aleatory and random character that seems indifferent to meaning and content.[17]

Grammar and rhetoric are therefore of interest to us here. In terms of grammar, the reference of the sign to an extra-linguistic realm is fundamentally an idealist notion.

---

[13]Christopher Norris, "Law, Deconstruction, and the Resistance to Theory," *Journal of Law and Society*, 15, no. 2 (1988): 181.

[14]Ibid.

[15]Christopher Norris, "Against a New Pragmatism: Law, Deconstruction and the Interests of Theory," in *Paul de Man*, 132.

[16]Ibid.

[17]Ibid.

This extra-linguistic reality is viewed as a product of language itself and not as a set of competing discourses.[18] It is seen as a product of language itself by means of metalepsis, the trope that reverses cause and effect through a shuttling exchange of priorities.[19] An instance of metaleptic reversal is when laws are justified as past effects of present causes. For example, birth control, family planning and even abortion are seen by liberal legal reformers in modern Muslim societies as having been anticipated in the laws of the past which permitted *coitus interruptus* (*ʿazl*). Modern issues were probably the last thing preoccupying the minds of the classical jurists and judges who formulated such laws. The first community to read the texts of those religious laws also had very little idea of what the laws would mean to future generations. Modern liberal reformers do everything in their power to broaden the original intention of these laws in order to accommodate their modern reforms. This form of metaleptic substitution - the habit of justifying past effects of present causes - is constantly called into play by those reformers who wish to bring about change in Muslim societies. Abrogation (*naskh*) of the Qur'ān provides an excellent case in point where the effect of judicial abrogation is viewed as acceptable as an original cause and part of the intent of the revelation. The truth is that abrogation was a highly disputed notion among the early legal and theological schools and not universally accepted by all.

I do not intend to discuss that aspect of rhetoric which abuses language through insincerity and exaggeration. In this discussion, the term rhetoric applies to the interrelationship of language and power. Critical rhetoric specifies and indicates the political dimensions of legal language and the manner in which the relations of power are inscribed in legal texts in non-communicative ways. Both these theoretical

---

[18]Goodrich, *Legal Discourse*, 136.

[19]Norris, "Resistance to Theory," 180-81.

observations will be applied, overtly and covertly, to the analysis of the language postulates in al-Ghazālī.

Language and Determination

In *al-Mustaṣfā*, al-Ghazālī juxtaposes his various and often contradictory assertions in a particular way.[20] This method of positing produces an effect akin to a pseudo-dialectic. Literary critics, such as de Man, describe this as the 'insight" that the reader gains from the text. Says de Man:

> It is necessary, in each case, to read beyond some of the more categorical assertions and balance them against other much more tentative utterances that seem to come close, at times, to being contradictory to these assertions ...[21]

These contradictions cancel each other out and do not gain entry into a synthesising dialectic. They are therefore termed a pseudo-dialectic. Like contradictions, there are also different levels of explicitness which do not facilitate a common level of discourse where 'the one always lay hidden within the other as the sun lies hidden within a shadow, or truth within error."[22]

Let us assume that al-Ghazālī was a critical author/reader of the Muslim juridical text. The 'insight" I am referring to seems to be an unstated principle, a negative moment which animates his thought and leads his language *away* from its

---

[20]Juxtaposition is a fundamental anatomical quality in Arabic and Islamic thought, says al-Azmeh, *Arabic Thought*, 55.

[21]Paul de Man, "The Rhetoric of Blindness: Jacques Derrida's Reading of Rousseau," in *Blindness and Insight: Essays in the Rhetoric of Contemporary Criticism*, 2d ed., rev. (London: Routledge, 1989), 102.

[22]Ibid., 103.

asserted stand, perverting and dissolving his stated commitment to the extent that it becomes devoid of substance. This is done in such a manner as to place the very possibility of assertion into question.[23] "Yet it is this negative, apparently destructive labour that led to what could legitimately be called insight."[24] The reader of al-Ghazālī should not find much difficulty in applying de Man's method of analysis, thereby grasping the 'insight." Bearing in mind that al-Ghazālī was often caught between conflicting and contradictory ideological stances, I wish to argue, that the 'insight" gained from the Ghazalian text, is connected to his understanding of religious language in general, and the doctrinal conflicts in Islamic history concerning the nature of divine speech, in particular. After all, the *raison d'etre* of legal theory was to make sense of the nomothetic discourse (*khiṭāb al-shar*^{c}) in the human context.

I will illustrate the insight from the chapter on language titled, 'The method of harvesting (*istithmār*) determinations (*aḥkām*) from the productive (*muthmirāt*) [sources] of principles (*uṣūl*)."[25]. By exploring the agricultural metaphor of harvesting (*istithmār*), al-Ghazālī tries to give the impression that the derivation of determinations (*aḥkām*) from the sources is a productive enterprise. He describes the axis dealing with language as:

---

[23]See Eric L. Ormsby's summary of the debate on inconsistency in al-Ghazālī's thought in *Theodicy in Islamic Thought: The Dispute over al-Ghazālī's "Best of all possible worlds"* (Princeton: Princeton University press, 1984), 100-1, where al-Ghazali's opponents al-Turtushi, al-Mazari and others accuse him of dangerous mixing of disciplines to the detriment of students and public alike.

[24]Ormsby, *Theodicy*, 103.

[25]*Mu*, 1:315.

> ... an indispensable part of the discipline of [legal] theory (*ʿumdat ʿilm al-uṣūl*) because the field of exertion for the jurists (*maydān saʿy al-mujtahidīn*) is in seeking determinations from their roots (*min uṣūliha*) and to harvest (*wa ijtinā'ihā*) them from their branches.[26]

The "roots" and "branches" referred to are nothing but words, phrases, sentences and syntax; in short - language. Here he sees language as part of an elaborate agricultural process, larger than gardening, which involves the cycle of sowing, hoeing, nurturing and finally harvesting the crop. Harvesting the crop is surely the ultimate objective of the entire process of farming, but one would be amiss in not seeing it as part of a larger plan. In the same way as farming is a complex and interdependent process where premature and incorrect harvesting could result in disaster, so too is language a complex interrelated process.

Having asserted the indispensability of language as a means of discovering determinations, al-Ghazālī then seemingly goes on to detract from his earlier statement, by saying: "the determinations (*aḥkām*) in themselves are not linked to the choice of the jurist" (*idh nafs al-aḥkām laysat tartabitu bi ikhtiyār al-mujtahidīn*).[27] The implication of this statement is that the determinations pre-exist the jurist, disclosing a form of epistemological determinism or foundationalism. A theological assumption intrudes in al-Ghazālī's thinking which underscores the point that the hermeneutical activity of the jurist is denied any form of subjective relationship with the text. Indeed, al-Ghazālī is explicit in saying that humanity, or as he put it, "creation has no influence in the founding (*ta'sīs*) and invention (*ta'sīl*) of the determinations."[28] Although al-Ghazālī uses the complex metaphor of production, his understanding is that

---

[26]Ibid.

[27]Ibid.

[28]*Mu*, 1:315-316.

determinations present themselves as objective moments to the jurist. Reading the text in this manner provides us with the 'insight" that the extra-linguistic reality of theology is constituted within language although there is an attempt to maintain the illusion that it is separate from language. It is only when these two citations of al-Ghazālī are read together that one can see how he attempts to create a pseudo-dialectic of language which can be viewed as constitutive in one instance and instrumental in the other.

We should not be surprised by this type of foundationalism within al-Ghazālī. Al-Ghazālī attempted the fusion of language and analytics (logic) in such a manner as to ensure that language provided apodictic meanings and predictable outcomes. At a later stage, I will explore the extent to which these theoretical assertions are simply rhetorical and grammatological devices which could provide different interpretations.

The Language of Law: From al-Shāfiʿī to al-Ghazālī

The central concern of language in the discipline of legal theory has already been noted by the modern scholar, al-Azmeh. He argues that because of such semasiological features of the Arabic language as abbreviations, implication, metaphor, metonymy, and the occultation of sense, linguistic concerns are imposed on the theorisation of legal theory.[29] Legal theory is primarily a text-based enterprise, and our understanding of the divine *logos* comes from what is found in the Qur'ān, the Prophetic statements and the decisions of successive generations of jurists. In short, legal theory (*uṣūl al-fiqh*) says al-Azmeh, is 'religion in the modality of knowledge," which is actually the pursuit of the 'positive association between humanity and divinity" by means of knowledge and knowledge is constituted in language.[30]

---

[29]al-Azmeh, *Arabic Thought*, 88.

[30]al-Azmeh, *Arabic Thought*, 86, 174.

It is generally accepted that in Islam the Word is the *logos*. The Qur'ān is the *ipsissima verba* of God. All the religious disciplines are integrally connected to the Word, which is the interface between the divine and human. Very early on in the genesis of Islam, the ability of language to express both the human and divine in one instance was subjected to a severe test. The nature of revelation formed the sub-text of the battle for theological supremacy between the Ash^{c}arites and the Mu^{c}tazilites. In their respective responses to this debate, each side proposed an epistemology and ontology closely resembling the grammatology of Arabic writing. Grammatology studies the history of systems of inscription and signs. Both the Ash^{c}arites and the Mu^{c}tazilites produced forms of writing, because "writing," says Derrida, "in general covers the entire field of linguistic signs."[31] Thus, each theological group tried to manipulate the signs in a particular way which we call writing or inscription. Legal theory is a form of "writing" or inscription of signs in order to derive values of epistemology and ontology from the divine word. The divine word is a form of "writing," (*kitāb*).[32] With legal theory being a form of languaging or writing, it would be instructive to locate al-Ghazālī in the tradition of Muslim grammatology as a master-jurist (*mujtahid*) and more especially as a follower of the Shāfi^{c}ī legal tradition.

Al-Shāfi^{c}ī's *al-Risāla* is the earliest available treatise on legal theory known for its systematic rigour and desire to give structure and coherence to the Arabic language. Al-Shāfi^{c}ī's study of the Qur'ān from a juridical point of view had led him to understand that the Qur'ān consisted of various discernible categories of verses. Al-Shāfi^{c}ī begins his *al-Risāla* with a lengthy discussion on the "perspicuous declaration"

---

[31]Derrida, *Of Grammatology*, 44.

[32]See the work of Muḥammad Shaḥrūr, *al-Kitāb wa al- Qur'ān: Qirā'a Mu^{c}āsira* (Cairo: Sīnā li al-Nashr, 1992).

(*al-bayān*), which 'is a collective term for a variety of meanings which have common roots but different ramifications."[33] The sum total of revelation, al-Shāfi'ī argues, includes various 'manifest aspects of perspicuous declaration" (*wujuh al-bayān*), which are more akin to different registers of interpretation than anything else.[34] From the very inception, al-Shāfi'ī makes a bid to anchor these registers of interpretation (*wujuh*) as being part of revelation itself via the perspicuous declaration.

This perspicuous declaration (*bayān*) is specifically directed to the Arabs who generally have no problem in understanding it, although some portions are less clear than others. For non-Arabs, unfamiliar with the Arabic language, the clarity of the declaration may present problems.[35] Mastery of the Arabic language and its nuances is stressed as a pre-requisite for fulfilling religious obligations.

> It is obligatory upon every Muslim to learn the Arab tongue to the utmost of his power in order [to be able] to profess through it that `there is no God at all but God and Muhammad is His servant and Apostle,' and to recite in it [i.e. the Arabic tongue] the Book of God, and to utter in mentioning what is incumbent upon him.[36]

Revealing indeed is al-Shāfi'ī's even more strongly dogmatic assertion about the Arabic language itself: 'Of all the tongues, that of the Arabs is the richest and the most extensive in vocabulary. Do we know any man except a prophet who

---

[33]Majid Khadduri, *al-Shāfi'ī's Risāla: Treatise on the Foundations of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1987) 67; Muḥammad bin Idrīs al-Shāfi'ī, *al-Risāla*, ed. Aḥmad Muḥammad Shākir (Cairo: Dār al-Turāth, 1399/1979), 21.

[34]Khadduri, *Treatise*, 67; al-Shāfi'ī, *al-Risāla*, 21.

[35]Ibid.

[36]Khadduri, *Treatise*, 93; al-Shāfi'ī, *al-Risāla*, 48.

apprehended all of it'?[37] It is virtually impossible to ignore al-Shāfiʿī's insistence that perspicuous declaration (*bayān*) and the Arabic language are coterminous.

For al-Shāfiʿī, the understanding of language is rooted in the revelatory inscription of *al-bayān* (perspicuous declaration).[38] The Qur'ān, also described as *al-bayān*, is the basis of legal knowledge, indeed all knowledge.[39] 'No misfortune," said al-Shāfiʿī, 'will ever descend upon any of the followers of God's religion for which there is no guidance in the Book of God to indicate the right way."[40] Al-Shāfiʿī was not original in his ideological assumption that the Qur'ān was the signifier of all knowledge. Prior to him, during the first/seventh century the Khārijites advocated the claim that the Qur'ān could resolve all difficulties and answer all outstanding questions. However, al-Shāfiʿī is credited for being the first person to give a sophisticated intellectual structure to this ideological position.[41]

Al-Shāfiʿī's next stage of reasoning shows that such terms as general, specific, absolute, restricted, implicit and explicit are linguistic categories which are derived from the Qur'ān and therefore, imparted by revelatory communication. He says: 'It is [God's] divine disposition to express something, part of which is literally general which

---

[37]Khadduri, *Treatise*, 88-89; al-Shāfiʿī, *al-Risala*, 42.

[38]Khadduri, *Treatise*, 67; al-Shāfiʿī, *al-Risāla*, 21.

[39]Khadduri, *Treatise*, 65; al-Shāfiʿī, *al-Risāla*, 20.

[40]Ibid.

[41]Naṣr Ḥāmid Abū Zayd, *al-Imām al-Shāfiʿī wa Ta'sīs al-Idiyologī al-Wāsiṭiyya* (Cairo: Sīna li al-Nashr, 1992), 21.

is intended to be obviously general."[42] We should note therefore, that even the hermeneutical devices he uses are glossed with sacrosanct overtones. Al-Shāfiʿī collapses the distinction between the world of meaning (the Arabic language) and the world of divine communication (*al-bayān*), or revelation. In the end revelation and language are inseparable and indistinguishable because by equating the hermeneutical categories and linguistic devices, by which language is understood, he caused them to become isomorphic relations of revelation.

Al-Shāfiʿī's four manifest aspects of a perspicuous declaration (*wujuh al-bayān*) are: [43]

(1) texts (*naṣṣ*),

(2) an obligation explained by the Prophet (*farḍ*),

(3) prophetic practice (*sunna*), and

(4) individual reasoning and juristic discretion (*ijtihād*).

These aspects are registers of interpretation representing three types of authority. The text for the authority of God; the obligation and prophetic practice for Prophetic authority, and the independent discretion for the authority of the Jurist. Al-Shāfiʿī makes the perspicuous declaration a simulacrum of the deity.

The result of al-Shāfiʿī's involvement with *al-bayān* is discernible. Language not only shapes experienced reality, and hence revelation and the Law of God, it also constitutes it. At first glance this may seem to ascribe an extremely modern perspective to al-Shāfiʿī's work. But the difference in al-Shāfiʿī's use of language lies in the fact that he does not ascribe to a semiological theory of language which uses a self-contained system of signs whose meanings are determined by their relations to

---

[42]Khadduri, *Treatise*, 94; al-Shāfiʿī, *al-Risāla*, 52.

[43]Khadduri, *Treatise*, 68; al-Shāfiʿī, *al-Risāla*, 21-22.

each other. In al-Shāfiʿī's model, there still remains a 'transcendental signifier," an extra-linguistic subject or object which constitutes that reality, and this signifier is, in theory, God. Having recourse to such a 'transcendental signifier" allows the notion of substitution to become possible, in the instance where the same referent has substitutes that generate ambiguity in signification. For instance, in the battlefield of the first civil war of Islām, when the Khārijites tried to assert the absolute sovereignty of God on the basis of the literal Qur'ān , it was the caliph ʿAlī who pointed out to them the complexity of signification. In response to the Khārijite agitation, he said that 'the Book [of God] does not speak itself, indeed men speak it," pointing out this perpetual ambiguity in language opened the way for ʿAlī and the Khārijites' ideological inscription of language, in the same way that al-Shāfiʿī was to do later.[44]

Al-Shāfiʿī's ideological inscription proceeds from the doxology that states that the explicit denotation (*naṣṣ*) has the ability to resolve all perceivable problems. It has already been pointed out that this ability stems from the Arabicity (*ʿurūba*) of the revealed text.[45] Arabicity, which is self-evident and empirical, then lends itself to a comfortable 'fit" in order to make the leap to the doctrine of the inimitability of the Qur'ān, known as *iʿjāz*. For both the meaning and vehicle of revelation have an inimitably sacrosanct character which renders void all other attempts at generating a competing meaning and style. Understanding the doxology pertaining to the Qur'ān becomes a daunting prospect, since on the hand it contains all realities, and on the other, its linguistic signification is absolutely comprehensive. The only way by which

---

[44]Abū Jaʿfar Muḥammad Ibn Jarīr al-Ṭabarī, *Tārīkh al-Rusul wa al- Mulūk*, 8 vols. (Beirut: Muʾassasa al-Aʿlāmiya li al- Maṭbūʿat, n.d.), 4:48.

[45]Abū Zayd, *al-Shāfiʿī*, 22.

any misunderstanding of the Qur'ān could be prevented was through the development of method and rules which would avert chaos in interpretation given the many possible ways of interpretation. It appears that al-Ghazālī followed in the footsteps of al-Shāfi^{c}ī, for he also believed in organising the structure of language.

The Structuring of Language in *al-Mustaṣfā*

In al-Ghazālī's discussion on language in *al-Mustaṣfā*, the language of jurisprudence is described by use of a trilateral formation. Words or terms denote a determinant (*ḥukm*) by three primary means:

(1) structure and discourse arrangement (*ṣīgha* and *manẓūm*)[46]

(2) intended sense and meaning (*fahwā* and *mafhūm*)

(3) denotation and intelligibility (*ma^{c}nā* and *ma^{c}qūl*)[47]

Under the rubric of "structure and discourse arrangement," the following linguistic categories are carefully examined: indeterminate (*mujmal*) and clarified (*mubayyan*); apparent (*ẓāhir*) and interpreted (*mu'awwal*); imperative (*amr*) and prohibited (*nahyi*); general (*^{c}ām*) and specific (*khāṣṣ*). The rubric of "understanding the intended sense and meaning" of terms encompasses al-Ghazālī's views on issues dealing with the textual evidence such as the notion of the requirement of the textual proof (*iqtiḍā'*), inference (*ishāra*), understanding of legal causation (*mafhūm al-ta^{c}līl*), understanding of the inarticulate premise (*fahm ghayr al-manṭūq*); levels of indicants of discourse (*dalīl al-khiṭāb*); proof-value of prophetic actions; and, proof-value of actions generally. The

---

[46]In translating *manzum* or *nazm* as "discourse" arrangement I have followed Rammuny's pioneering studies on al-Jurjānī's linguistics, see Raji M. Rammuny in "Al-Jurjānī: A pioneer of Grammatical and Linguistic Studies," in *Historiographia Linguistica*, 12, no. 3 (1985): 351-371 passim.

[47]The term *ma^{c}nā* is similar to *fahwā* and *mafhūm*, in so far that it is the "idea" or "mental image" which accrues in the mind in response to a question "what is it"?, when one investigates the quiddity of something.

discussion on the "denotation and intelligibility of terms" is mainly a discussion of juridical analogy (*qiyās*) as well as legal causation.

Al-Ghazālī treats each of these topics with the required attention and detail they deserve by summarising the views of his predecessors and then indicating his own preference. To a large extent he concurs with the views of al-Shāfiʿī or al-Bāqillānī. In order to grasp the leitmotif of al-Ghazālī's general understanding of language, I will conduct a selective examination of some of the topoi of his discussions on language.

Linguistic Topoi

On the origins of language: Linguistic determinism

Whether the source is the Qur'ān, sunna, or consensus, it is the Prophet who articulates the dogma via phrases, deeds, silence, or a tacit approval. When studying al-Ghazālī's discussions of these sources of Islamic law one cannot ignore the persistence of a strong element of linguistic determinism. Language is seen as being virtually providentially determined, thereby generating a set of meanings that satisfy the ontological and epistemological requirements of theology. These theological assumptions surface in discussions on:

(1) nomothetic discourse (*khiṭāb al-sharʿ*)

(2) the word of God (*kalām allāh*)

In al-Ghazālī's writings, as with those of some of his Shāfiʿī predecessors, language is far more than a substrate; it is correlative to revelation, explained by the notion of discourse (*khiṭāb*) which forms the equivalent to the perspicuous declaration (*al-bayān*) introduced by al-Shāfiʿī. The linguistic categories are providentially predisposed to generate the 'fit' with revelation. It is in this sense that language goes further than purely reflecting revelation - it also constitutes it. This correlation

accounts for the ahistoricity of the revelation which results in it being received in many quarters as a sacerdotal word, incapable of being set in any time or space, or contained in any concrete form: "a devotional element, unattainable to discourse."[48] In this sense the word has a semiotic value which signifies and supplements the authority of religion and its experts.

In contrast, al-Ghazālī's view on the origins of language is a dialectical one. Although he subscribes to al-Shāfi'ī's views on the revelatory *nature* of language, his views on the *provenance* of language are more complex. First, he proposes three scenarios for the origins of language:[49]

(1) that languages are known to humans by conventional (*iṣṭilāḥī*) means only

(2) that languages are known by means of periodic instruction (*tawqīf*)

(3) that the initial elements of language were by periodical instruction and the rest by conventional means

Al-Ghazālī then creates two sets of arguments: one hypothetical, the other factual. In the hypothetical argument, all three scenarios are considered to be possible. Again the arguments are quasi-theological. The Eternal and Omnipotent Power, says al-Ghazālī, cannot be incapable of creating sounds and letters which people could hear and see, and from these a language was developed.[50] This then allows for the theory of the divine origin of language, in so far as the Creator generates the original sounds and letters within people. In discussing the accepted theory of the conventional origin

---

[48]al-Azmeh, *Arabic Thought*, 68.

[49]*Mu*, 1:318.

[50]*Mu*, 1:319.

of language, again he says that God can unify the activities of the *compotes mentis* (*ʿuqalā'*) in such a manner that they themselves could discern the need to communicate, and hence they could design a language. The modality for this would be the same primitive means by which a parent teaches a child a language, or the way in which a mute expresses himself/herself by means of signs. If each exclusive scenario is possible, al-Ghazālī argues, then a combined scenario - partly periodic instruction and partly conventional - is also eminently possible.

In his factual ('reality') argument, he says that there is no unequivocal way of knowing the origins of language since we have no categorical and demonstrative rational proof, no plurally transmitted report (*tawātur*), nor any unequivocal revelation (*samʿ*) to support such an assertion. Therefore, he says, further speculation on the subject would be indulgent.[51] The Qur'ānic verse, "And He [God] taught Adam all the names," which theoreticians often quote as proof of the divine origin of language, is not cogent proof, since it is open to several interpretations, said al-Ghazālī.[52]

Unable to formulate a final position on the origins of language in the section directly dealing with it, al-Ghazālī did not commit himself. In a subsequent discussion as to whether nouns can be established by analogy, he merely proposed a view. It is interesting to observe how he arrived at this proposition. In a manner of argumentation resembling that used by the literalists (*Zāhirites*), al-Ghazālī opposed extending the signification of a designated word to another signifier, unless Arab authorities justified such an association on the grounds of a periodic instruction (*tawqīf*). For example, the word *khamr*, signifies the beverage made of grapes,

---

[51]*Mu*, 1:320.

[52]*Ibid.*

because it "obscures" the intellect.[53] If a date, or raisin beverage called *nabīdh* were to cause a similar effect, the term *khamr* would not be the appropriate term for describing this new substance. To equate *nabīdh* with *khamr* would be unsatisfactory and tantamount to linguistic "fabrication" (*ikhtirāᶜ*) or "inventing lies" (*taqawwul*) conflicting with the periodic instruction (*tawqīf*) dimension of the Arabic language.[54] Only if the Arabs were to *tell* us that they call *nabīdh* by the term *khamr* could it be legitimately used, and not on the grounds of a logical analogy. Similarly, when the Arabs inform us that every root word (*maṣdar*) has an active participle (*fāᶜil*) the creation of the active participle *ḍārib* from the root *ḍ-r-b* should be assumed to have been constructed on the basis of periodic instruction (*tawqīf*), and definitely not by analogy. Al-Ghazālī's resistance to logical analogy as formative ground in language was consistent. One of his favourite rebuttals against his polemical adversaries was the phrase, repeatedly found in *al-Mustaṣfā*, that "analogy is not applicable in language" (*la qiyāsa fī al- lugha*).[55] Here al-Ghazālī comes out very strongly in favour of the *tawqif* origins of language.

Al-Ghazālī then argues that although some words might share certain elements of meaning by correspondence and analogy, they would not necessarily be used by the Arabs in that sense. The term *zānī* (fornicator) for instance, is used to describe the illegal act of heterosexual fornication. On the basis of analogy, the term *zānī* could thus also be applied to homosexuality when the male pudendum is inserted into another

---

[53]*Mu*, 1:320; 1:322.

[54]Ibid.

[55]*Mu*, 2:5; also *Mu* 2:10 *"Inna al- qiyās bāṭilun fi al-lugha liannaha tuthbatu tawqīfan"*; *Mu*, 2:39 *"wa al-lughatu tuthbatu tawqifan wa naqlan, la qiyāsan wa istidlālan."*

male's posterior.[56] Similarly, the word thief (*sāriq*) is also applied to a necromaniac (corpse thief) on the basis of analogy since the two words share certain elements of correspondence. Al-Ghazālī disagrees with these analogical extensions. The basis of his disagreement is that one uses a false syllogism. For example, the Arabic term *adham*, meaning "a black horse," would be an inappropriate term to use to describe "a black person;" just as it would be incorrect to take the term *qarūra*, meaning "a glass vessel to store liquids," and apply it to describe a "clay jug" or a "pool of water," simply because both words signify the storage of liquids. He insists that the licence for all etymological conjugations (*taṣrīf*) that are based on analogy *must* be provided by way of periodic instruction or transmission (*tawqīf*), and only from Arabic speakers. On the grounds of these illustrations, al-Ghazālī concludes that "indeed language is entirely positing and periodic instruction, where analogy is not applicable." (*anna al-lughata waḍ'un kulluha wa tawqīfun laysa fiha qiyāsun aṣlan*).[57]

At first, al-Ghazālī argued that there were no universal arguments supporting the theories of the conventional or revelatory origins of languages. However, later on when discussing the role of analogy in the formation of nouns, he came down firmly in support of language as a "specific positing (*waḍ'*) of a particular phonemic configuration, a word to designate a particular sense" as well as supporting the primacy of periodic instruction (*tawqīf*) in language-use, rather than convention or analogy.[58]

---

[56]*Mu*, 1:322.

[57]*Mu*, 1:324.

[58]al-Azmeh, *Arabic Thought*, 116.

Al-Ghazālī's insistence on following the authority of the Arabic-speaking community for the interpretation of words, is a central proposition of his legal philosophy. On closer inspection, the privileging of the interpretative community is a consequence of a more dogmatic formulation of language, namely the supremacy of positing (*waḍ'*). Once he had committed himself to his theory that language originated from transmitted authority, the interpretative community became a logical corollary.

Al-Ghazālī was not aware of his limitations as evidenced by the fact that he was unable to go beyond interpretation itself. Despite his best intentions, the desire to preserve the authority of the interpretative community was in itself interpretation and therefore also an ideological moment. Al-Ghazālī's goal of resorting to the authority of periodic instruction (*tawqīf*) as a standard of objective criteria was not always realisable. For instance it is known that, even in al-Ghazālī's era, grammarians and lexicologists differed in their views on matters pertaining to the Arabic language. Al-Ghazālī does not reopen these debates but strategically aligns himself to the consensus position on these issues by citing examples from the linguistic practice of the Arabs. He would frequently invoke the slogan: "no analogy in language" (*la qiyās fī al-lugha*) which became a valuable rhetorical device in his repertoire, just as in a previous age, the slogan "there is no rule but that of God," (*la ḥukm illa lillāh*) was the foundationalist rhetorical creed of the Kharijites.

Original positing and uses of language

The debate on the origins of language led to the question of how language is used. Clearly, the assumptions for language as positing and language as convention would be different. According to al-Ghazālī lexical nouns (*al-asmā' al-lughawiyya*) have significance at two levels: by original positing or coinage (*waḍ'iyya*), and by

convention (*ʿurfiyya*).[59] He concedes that the meanings of lexical nouns which had originally been posited as general can be subverted to be used in their customary (*ʿurfī*) or specialised sense. An example of when a lexical meaning is overshadowed by its conventional use is the word *dābba*, which originally meant "every creeping thing." But subsequently it has been used for things that creep on four feet, excluding thereby human bipeds or the centipede. So with the word *mutakallim*, which lexically means "a speaker," but more commonly is the signifier for a "dialectical theologian;" and the term *faqīh*, which originally meant means the "one who has discernment," but now means a jurist. Both words - even though they each have a posited (*waḍʿ*) meaning - now have a more specialised meaning. One can compare this to English where "speaker" would cover any number of orators, but "Mr or Madam Speaker," or "the Speaker" would be understood, in most instances, to be dealing with a very specialised parliamentary occupation.

A word can also be used in such a manner that it is totally devoid of its original positing, such as the word, *ghāʾiṭ* which used literally, refers to "a depressed piece of ground with a protective circumference," but its more common usage is the figurative sense, signifying human excrement.[60] The original positing of *ghāʾiṭ* was forgotten in language use and only the figurative use comes to mind.

Technical terms adopted by professionals (*muḥtarifūn*) and artisans (*arbāb al-sanāʿāt*) to describe their tools, are named by positing and not by convention.[61] If

---

[59]*Mu*, 1:325.

[60]*Mu*, 1:326.

[61]*Mu*, 1:325.

things were not named by their positing this would have meant that all nouns, and by implication language, had conventional origins. Al-Ghazālī infers that there is a substratum of positing on which all subsequent linguistic developments were based, and therefore, the search for the origins of language should never be abandoned.

Al-Ghazālī admits to an evolution in language, the examples of *ghā'iṭ* and *dābba* being cases in point. This evolution takes the form of semantic growth where the new meanings of the words do not stray from the original positing such as with the word *dābba* which is now used to signify a particular species of creeping animals, where originally it may not have had that signification. The new application does not make its original signification totally absurd or irrelevant. The extreme case is *ghā'iṭ* where the literal term was hardly in use but the figurative sense was used more frequently. In both examples there is a semantic link, however tenuous, between the original positing and the subsequently evolved meanings of the words. In this way al-Ghazālī continues to insert linguistic determination in complex language usage, which he does by creating several categories of terms.

Distinguishing between lexical, religious and legal terms

Legal theory by its very nature had to deal with different kinds of terms. It was crucial for the theorist to know in what sense a term was employed. Al-Ghazālī then informs us under the rubric of legal terms (*al-asmā' al-shar'iyya*) that some groups, the Mu'tazilites, the Khārijites and some unidentified jurists (*fuqahā'*), distinguished between the following categories of terms:[62]

[62]*Mu*, 1:326. Also see Muḥammad Khālid Masud, "Shāṭibī's Theory of Meaning," *Islamic Studies*, 32, no. 1 (1993): 5-16.

(1) lexical (*lughawiyya*)

(2) religious (*dīnīyya*)

(3) legal (*shar^{c}īyya*)

He cautiously elaborates these *categories* of his theological opponents, but does not indicate his own agreement or disagreement. Engaging in circumlocution, he employs a detailed but unconvincing quote from al-Bāqillānī who rejected the validity of such categorisation. Al-Bāqillānī's position on legal terms is encapsulated in the dictum: "that the revelation (*shar^{c}*) had discretion [to change meanings] by imposing a condition (*sharṭ*) [on meanings], not by changing the posited (*waḍ^{f}*) [meanings of the word]," (*fa as-shar^{c} tasarrufun bi waḍ^{f}i al-sharṭ la bi taghyīr al-waḍ^{f}*).[63]

Al-Ghazālī agreed that the revelation (*shar^{c}*) did exercise discretion in generating meanings but drew our attention to the convention of language (*^{c}urf al-lugha*) which also had to have some sort of discretionary influence. Semantic growth, at this level, takes place in two ways. The first is to specify (*takhṣīṣ*) the scope of the signified (*musammayāt*). For example, the word *dabba* should in strict lexicographical terms apply to every creature that walks, crawls or creeps. But we know, as customarily applied now, the word is only used for crawling quadrupeds. Similarly, the revelation specified and limited the signification of words like, pilgrimage (*ḥajj*), fasting (*sawm*) and faith (*imān*) to make them special signifiers. Thus in the same way that the revelation (*shar^{c}*) had a discretionary use of language, the Arabs were also entitled to discretionary use of their language (*idh li'al-shar^{c} urfun fī al-isti^{c}māl kamā li al-^{c}arab*). The second form of semantical development is to loosen the restrictions on a word. One way of doing so would be to call something by the name with which it is associated or connected. For example, "wine" (*khamr*) is called "prohibited"

[63]*Mu*, 1:330.

(*muharrama*) but, in strict terms, it is only the *consumption* of the beverage that is prohibited, not the beverage *per se*. A mother is described as "prohibited" (*muharrama*), yet, in strict terms, it is only sexual intercourse with her that is prohibited. The same rule is applied to the general term "prayer" (*ṣalāt*), which included the essential parts of bowing (*rukūᶜ*) and prostration (*sujūd*). However, all the associated actions and gestures of praying, including bowing or prostration are popularly identified as prayer (*ṣalāt*) in the customary usage of the revelatory discourse (*sharᶜ*).

Al-Bāqillānī argued that there should be some form of sanction for legal terms by means of periodic instruction (*tawqīf*), but he did not provide an example. In reply, al-Ghazālī said that such a requirement was only necessitated when the goals (*maqāṣid*) of repeated statements (*takrīr*) and contextual indicators (*qarā'in*) were unclear and not easily understood.[64] So the lexicographical terminology of *ṣalāt*, strictly meaning "supplication," began to assume the meaning of "ritual prayer" once certain other commonly associated actions had been added to it's meaning in customary usage. The word *ḥajj*, literally meaning "to intend," came to be known as the formal pilgrimage once the other associated actions had been added to its commonly accepted usage. These and other terms are fairly clear and therefore do not need revelatory sanction for their technical use. Clearly, al-Bāqillānī was more concerned with keeping the primordial origins of language intact, and therefore wished to control excessive discretion in the use of language. He would have preferred, therefore, to have had a periodic instruction (*tawqīf*) to legitimate language use. Al-Ghazālī, in contrast, would appear to have been content to allow language users the liberty to employ discretion in the determination of religious and legal language, on

[64]*Mu*, 1:332.

condition that the users had a clear understanding of the hermeneutical intent of their statements. Here, al-Ghazālī clearly preferred the hermeneutical movement in language - with emphasis on the significance of repetition and contextual indicators as interpretative keys - to a language strictly governed by periodic instruction. While al-Baqillani favoured the retention of linguistic normativity, al-Ghazālī was inclined to hermeneutics and linguistic subjectivity. Al-Bāqillānī insisted on the autonomy of the legal lexicon, while al-Ghazālī would only admit to the partial autonomy of the legal lexicon.

So far one observes how an extremely structured discussion on language presents itself in *al-Mustaṣfā*. Al-Ghazālī actually led the reader into the debate by employing a logical pattern of creating categories, divisions and subdivisions to suggest that the entire project was visible from an archimedian vantage point. When al-Ghazālī's point was equivocal, and he preferred not to disclose his own position, then he would introduce several categories and viewpoints. In such instances, he subtly juxtaposes his own view among the various positions he was positing, those of his adversaries - such as the Muʿtazilites - and then, with equal art, leave the decision as to whether he supported or rejected the opinions of his adversaries to the reader.

Completely signifying speech ('al-kalām al-mufīd'):

The hermeneutical field

Having discussed the origins of language and the use of terminology, al-Ghazālī then approached the gist of the linguistic debate in law: the question of signification. The spoken word can either completely signify something or be unable to do so. The hermeneutic domain only concerns itself with the provision of a completely signified spoken language.

Al-Ghazālī maintains that there are two types of signifying actions (*dalāla*):[65]

(1) those that signify (*yadullu*) something

(2) those that do not signify anything

The first type is signification by means of an essence (*ma yadullu bi dhātihī*). [66] Rational indicants (*al-adilla al-ʿaqliyya*) are said to signify with their essence. The second type is signification by means of positing and original coinage (*waḍʿ*), which are of two types: verbal signs and non-verbal signs, such as signals (*ishāra*) and symbols (*ramz*). This typology appears to be of an ontological kind that al-Ghazālī introduces in language. Certain words in themselves can signify something else, such as logical propositions. Other words and signs signify semiotically, in relation to other signs.

At another level of categorisation al-Ghazālī then divides *verbal* signs into those that signify (*mufīd*), in other words they have meaning, and those signs that do not signify (*ghayr mufīd*) and have no meaning. In order to illustrate verbal denotation al-Ghazālī presents three types of sentences in terms of their economy of signification:

(1) fully autonomous in their denotation

(2) not autonomous in their denotation except by means of a contextual indicator (*qarīna*)[67]

(3) partially autonomous in their signification

Sentences which are fully autonomous in their denotation are verses like: 'Do not go near fornication (*zinā*) (Q.17:32)." 'Do not kill yourselves (Q4:29)." Such statements were called explicit denotations (*naṣṣ*) because of the lack of ambiguity (*ẓuhūr*) in their

---

[65]*Mu*, 1:333.

[66]Ibid.

[67]Other terms I use to translate *qarīna*, are "contextual indicator," or "contextual seme," and occasionally as an "associative sign."

meaning. An example of a sentence which only became autonomous in its denotation with the assistance of a contextual indicator would be the verse: "Or he in whose hand is the marriage-tie forgoes his claim... (Q. 2:237." A contextual indicator clarified that the "hand" meant the power of the guardian or husband and thus made it possible to understand the verse. An example of partially autonomous denotation is the verse "Till they [agree to] pay the exemption with a willing hand, after having been humbled [in war] (Q. 9:29)." [68] The full sense of how exemption had to be paid is not clear from this verse and therefore it is deemed partially autonomous.

Explicit Denotation: *Nass*

Of the different types of denotation, the most common and frequently used is the explicit denotation (*nass*). Quite predictably, *nass* was also divided into two primary types. In the first type the explicitness of the individual meaning-laden vocable (*lafẓ*) and the arrangement of the discourse (*manzum*) leaves one in no doubt as to its meaning. For example: "Do not kill yourselves (Q. 4:29)." The second type of explicit denotation gains its explicit content via the clarity of the meaning (*faḥwā*) and comprehension (*mafhūm*) of the statement. Examples are: "Do not say to them [parents] fie! (Q.17:23)"; "None of you shall be wronged by as much as a hair's breadth (*fatīla*) (Q. 4:77)"; "Whoever does good the weight of a mustard seed (Q. 99:7)."; "From among them are those that if you entrust them with a *dīnār* they will not return it to you (Q. 3:75)."

Al-Ghazālī maintained that sentences that were partially autonomous in their denotation and those that required circumstantial clues, should have had something more than simply the associative relationship (*idāfa*) between the signifier and the

[68] *Mu*, 1:336.

signified (*madlūl*). They had to fulfil the condition of being free from any inference of uncertainty (*iḥtimāl*) in order to be called an explicit denotation (*naṣṣ*). If the uncertainties could not be resolved then the signification would have to be labelled indefinite discourse (*mujmal*) or obtuse (*mubham*). If one of the many probabilities were found to be preponderant, it would be called apparent (*ẓāhir*), and if the preponderant probability were found to be a distant one, then it would be called an interpreted (*mu'awwal*) statement. Hence a completely signifying vocable can be one of three denotations: explicit (*naṣṣ*), apparent (*ẓāhir*) or indefinite (*mujmal*).

Al-Ghazālī then provides three definitions of explicit denotation (*naṣṣ*), because, according to him, *naṣṣ* in itself is an equivocal noun or a homonym (*ism mushtarak*)! *Naṣṣ* is thus a division of language in terms of an economy of certainty.

(1) Al-Shāfi^{c}ī applied the definition of the apparent (*ẓāhir*) to that of *naṣṣ*.[69] According to al-Ghazālī, there was no harm in applying this general definition to the legal (*shar^{c}*) understanding of the term. This definition conformed to several usage's of the Arabs. The Arab say *"naṣṣat al-ẓabya,"* which literally means "the gazelle lifted her head", thus "exposing" and making it "apparent" (*ẓahar*). A chair is called a *manassa* when a bride "appears" on it. The Prophet was described as: *"kāna al-rasul ṣallallāhu ^{c}alayhi wa sallam idha wajada furjatan naṣṣa,"* (When the Prophet (peace be upon him) experienced delight, he made "expressed" it or made it "evident".) According to this definition of al-Shāfi^{c}ī, when one of many probabilities became preponderant with certainty (*qaṭ^{c}*) it was called an explicit denotation similar to "evident" or "apparent" (*ẓāhir*).[70] This means that the "exposure of the head," the "appearance on the chair," and the "evident" delight of the Prophet were implicit and

[69]*Mu*, 1:385.

[70]Ibid.

become explicit through the preponderant acts of "lifting," "sitting," and "expressing." These acts did not cease to have these latent properties simply because the preponderant act had not been performed. Here *nass* was defined in terms of the usage of the Arabs and the ability of the term to clearly denote its meaning.

(2) The second definition does not rely on linguistic usage. When a word or sentence is *ab initio* free from any instance of uncertainty (*iḥtimāl*) and its signifying meaning is certain (*qaṭ'*) then it is an explicit denotation.[71] For example, the word "five" does not signify "six," nor does the word "horse" signify "donkey." It would be considered a *nass* in terms of both the affirmation of the signified and the negation of the non-signified. In so doing, the sense generated from such a word or statement would be certain. Al-Ghazālī points out that a word can be an explicit denotation, which is also apparent and indefinite, (*naṣṣan ẓāhiran mujmalan*).

(3) The third definition of *nass* relies on associative factors. When there is an absence of an indicant (*dalīl*) which will introduce "reasonable uncertainty" (*iḥtimāl maqbūl*) in signification then such a sentence can also be called an explicit denotation. The difference between the second and the third definition is one of degree. The second definition requires freedom from uncertainty *ab initio* (*aṣlan*), whereas the third definition demands freedom from a particular type of uncertainty (*iḥtimāl makhṣūṣ*), namely "reasonable uncertainty," and not freedom from negligible uncertainty. Al-Ghazālī showed a strong approval for the second sense of *naṣṣ*, which sets it apart from being confused with the apparent (*ẓāhir*). Explicit denotation (*naṣṣ*), then, is the measurement of the vocables in terms of the presence of certainty.

---

[71] *Mu*, 1:385-6.

Hermeneutics: *Ta'wīl*

Signifying speech (*mufīd*) does not only occur in the form of explicit, apparent and indefinite denotation where the linguistic register measures the extent of certainty in denotation. Signifying speech can also be uncertain and open to approximation. When meaning is measured in terms of the absence of certainty in legal theory it is called hermeneutics (*ta'wīl*). Hermeneutical statements (*mu'awwal*), measure vocables in terms of an economy of uncertainty. A *ta'wīl* interpretation occurs when an uncertainty is reinforced by an evidentiary indicant (*dalīl*). The preponderance of this uncertainty has the effect of grossly undermining the apparent (*ẓāhir*) meaning of the vocable and destabilising the essential meaning of the word or sentence.[72] Al-Ghazālī suspected that every *ta'wīl* was a deflection of a word from its literal meaning (*haqīqa*) to a figurative (*majāz*) one. Similarly, the restriction (*takhṣīṣ*) of a general word also meant a switch from literal to figurative.[73] If it had been established that a word's original positing and literal meaning were both comprehensive (*istighrāq*), then its concise (*iqtiṣār*) meaning should be understood to be in the figurative sense. In the case of *ta'wil* an exception would arise, according to al-Ghazālī, on occasions when the reasons for uncertainty (*ihtimāl*) are obvious (*yaqrubu*) to the mind, but on other occasions the uncertainty may not be so self-evident (*yabᶜudu*). It is the strength of the indicant (*dalīl*) that would determine the degree of uncertainty. The indicant capable of introducing an element of uncertainty, could be a contextual indicator (*qarīna*), an analogy (*qiyās*), or another stronger apparent statement (*ẓāhir*). In fact, al-Ghazālī points out that it would have been difficult to resolve some interpretations without assuming the presence of an elliptical contextual indicator (*illa bi taqdīr qarīna*), even

---

[72]*Mu*, 1:387.

[73]Ibid.

though the latter sign had not been transmitted authoritatively.[74] If a hermeneutical interpretation (*ta'wīl*) stood to clash directly with an explicit denotation (*naṣṣ*), then it would be preferable to generate a non self-evident hermeneutic (*al-ta'wīl al-ba'īd*) in order to avoid a clash with the *naṣṣ*.

In rational matters, only a *naṣṣ* free of any possibility of uncertainty is acceptable. A strong or weak sense of uncertainty are both equal for the simple reason that a rational indicant does not tolerate any contradiction. The strength of an indicant would to a large extent be determined by the degree of uncertainty. It is therefore compulsory for jurists to direct their attention to those elements which would generate the strongest probability of certainty or uncertainty. This proves that every hermeneutical interpretation is not acceptable purely on the strength of an arbitrary indicant, since people will differ as to whether an indicant is strong or weak, says al-Ghazālī.

In the case of textual uncertainty accompanied by several contextual (*qarā'in*), only the collective force of these contextual indicators is capable of ending a particular interpretative uncertainty. Singular and isolated *qarā'in* on their own are not of sufficient strength to eliminate any uncertainty.[75] An example of this is the interpretation of two statements of the Prophet. One was addressed to Ghaylān who embraced Islam having at the time 10 wives. The Prophet said: "Take four and leave the others." In the other statement he ordered Fayrūz al-Daylamī who accepted Islām

[74]*Mu*, 1:388.

[75]*Mu*, 1:389.

while married to two sisters (a marriage forbidden in Islām): 'Take one [sister] and leave the other"![76]

The Kūfan jurist, Abū Ḥanīfa interpreted these statements to mean a performative, a command to initiate marriage. He explained that 'take four" meant 'marry four" and only marry one sister. The phrase 'leave the other(s)," according to Abū Ḥanīfa meant you cannot *marry* them all, only four, or one of the two sisters. Abū Ḥanīfa's interpretation followed the non-apparent meaning of these statements requiring new marriages *ab initio*, the implication being that the pre-Islamic marriages of Ghaylān and Fayrūz were invalid.

Al-Ghazālī disagrees with the Kūfan jurist. Contrary to Abū Ḥanīfa, he believes that preference should be given to the apparent (*ẓāhir*) sense of the word 'take four" or 'take one" as presuming the continuity of the marriages. In other words, the command allowed the husbands the option to continue with marriages of their choice, up to four in the one case and one sister in the other. At best Abu Hanifa's reading of the statement was ambiguous (*muḥtamal*) and supported by an interpretation based on analogy, said al-Ghazālī.[77] On the other hand, all the contextual indicators (*qarā'in*) supported the apparent meaning of the statement in a more compelling manner.

There were several contextual indicators which supported al-Ghazālī's reading of the case. The main one was the understanding of the Companions of the Prophet

---

[76]*Mu*, 1:390.

[77]Ibid.

and the subsequent practice of generations of Muslims. Further, if the intention of the statement was to invalidate all the marriages there were no additional indications of eliciting the consent of the prospective bride or teachings regarding marriage, especially when the persons involved were recent converts. Abū Ḥanīfa's preference of the non-apparent meanings was unacceptable to al-Ghazālī because the contextual circumstances clearly contradicted such an interpretation. Al-Ghazālī does concede on a valid point though at the end of this polemic with Abū Ḥanīfa: that these differences in interpretation would change, given the varying conditions that could affect the thinking of a master-jurist (*mujtahid*).[78]

In another case al-Ghazālī is prepared to depart from the apparent (*ẓāhir*) meaning of the statement in favour of a non apparent interpretation. In doing so he defends the practice of a hermeneutical procedure (*ta'wīl*) seemingly abolishing (*raf*^{c}) the entire explicit denotation (*naṣṣ*) or part thereof.[79] The case in point here is the instance when Abū Ḥanīfa was charged by some theorists, especially al-Shāfi^{c}ī, for abolishing part of the *naṣṣ* when he ruled that the tax levy (*zakāt*) on animals could be substituted by its equivalent in other commodities or cash. The prophetic tradition rules that for every 40 sheep, one sheep should be given in *zakāt* - annual tax.[80] Al-Shāfi^{c}ī and his followers interpreted the rule literally, saying that the payment could only be in the form of sheep for sheep-tax, goats for goat-tax and camels for camel-tax. They did not see the tax as being exchangeable. Abū Ḥanīfa, however, argued that it was the *value* of the tax that was obligatory, not the sheep *per se*. The

[78]*Mu*, 1:392.

[79]*Mu*, 1:394.

[80]*Mu*, 1:395.

specification of a sheep was only the measurement. Al-Ghazālī defended Abū Ḥanīfa's position saying that the

> vocable (*lafẓ*) is an explicit denotation (*naṣṣ*) in so far as it established the principle of obligation. It is *not* a *naṣṣ*, in so far that it specifies and describes [how the obligation should be fulfilled].[81]

In an apology for al-Shāfiʿī's rigid view, al-Ghazālī said that the founder of his school understood the specification of sheep to be a devotional (*taʿabbud*) command for two reasons: firstly, because the subject matter was related to a devotional matter such as *zakāt*, and secondly, the semiotic strength of the indicant was too weak (*quṣūr al-dalīl*) to justify a more liberal interpretation on the grounds of an apparent meaning.

In a veiled critique of "some legal theorists" (*uṣūliyūn*), no doubt aimed specifically at Abū Ḥanīfa, al-Shāfiʿī and some of their followers, al-Ghazālī offered an explanation for their incorrect hermeneutical expositions on occasions.[82] It was, he said, due to their inability to understand that:

> ... all these matters are in the realm of juristic discretion. Those who are not intimate with the discursive latitude of the Arabs will obviously adopt a dislike [for such interpretations] and assume that whatever the vocable immediately brings to mind is an explicit denotation (*hādhihī kulluhū fī maḥall al-ijtihād, wa innama tashmaʿizzu ʿanhu tibāʿu man lam yaʿnas bi tawassuʿ al-ʿarab fī al-kalām wa zanna al-lafza naṣṣan fī kulli ma yasbaqu ila al-fahm minhu*).[83]

In articulating this explanation, al-Ghazālī also indirectly criticised fellow Shāfiʿī's for their rigidity and inflexibility towards language, and as a result, their

---

[81] *Mu*, 1:396.

[82] *Mu*, 1:394.

[83] *Mu*, 1:398-99.

misreading of the intentions of the revelatory and prophetic phrases. He cited other examples where he defended the restriction of the ambit of the explicit denotation (*naṣṣ*) by hermeneutical (*ta'wīl*) expositions. For example, several categories of recipients are entitled to the *zakāt*-tax levy in Islām. However, to give all one's *zakat* to one category of entitled recipients was permissible and would not be contrary to the *nass*.[84] The verse in question (Qur'ān, 9:60) could well have been a *naṣṣ* in terms of two of al-Ghazālī's three definitions of *nass*, where an apparent (*ẓāhir*) categoric meaning (definition one) and an absence of uncertainty (definition three) could qualify a statement as a *naṣṣ*, but it might not have qualified as *naṣṣ* in terms of his preferred definition (definition two) where the text must be free from uncertainty *ab initio*.

Following the same rationale, al-Ghazālī believed that the Qur'ānic verse which called for sixty needy persons to be fed once, *could* legitimately be construed as feeding one needy person for sixty days.[85] This verse, he argued, did not comply to the ideal definition of explicit denotation (*naṣṣ*) due to semiotic uncertainty. Therefore, the number "sixty needy ones" could have meant to indicate the *amount* of food which was to be disbursed rather than the *number* of people. This verse, according to al-Ghazālī, is an example of the vagueness leading to ambiguity and uncertainty. However, and this point should be carefully noted, he goes on to say that the feeding of one person for sixty days was *not the object of the penance*. It was feasible, al-Ghazali believed, in keeping with al-Shāfi'ī's views, for the intent of the verse to have been to give life to sixty deserving souls thus ensuring for the penitent the blessings of

---

[84]*Mu*, 1:399; The verse in question is Q 9:60: "The offerings given for the sake of God are [meant] only for the poor and the needy, and those who are in charge thereof, and those whose hearts are to be won over, and for the freeing of human beings from bondage, and [for] those who are overburdened with debts, and [for every struggle] in God's cause, and [for] the wayfarer: [this is] an ordinance from God - and God is all-knowing, wise."

[85]*Mu*, 1:400; See Q. 58:4: "And he who is unable to do it shall feed sixty needy ones..."

the poor. In support of his argument of benediction, he argued that no gathering of Muslims is free from a saint (*walī*) and the opportunity to gain the benediction of feeding a poor saint should not be missed.[86] In this last example, al-Ghazālī reveals his *Ṣūfī* inclinations explicitly and literally. His overall interpretation, however, did not conflict with the verse but grasped the essence and objective of the verse.

Grammatology of *Lugha*

Language carries a legal tradition, a tradition embedded in our very speech and of which our speech and phrases are unwitting witnesses.[87] Language is the trace of the past in which we live, the unwritten writing which Derrida calls "arche-writing." In grammatological terms language is always marked, cut, re-cut, re-marked and its signs articulated prior to speech or any phonic linguistic substance.

The language of legal theory has an "arche-writing" and traces of al-Shāfiʿī, the founding fathers of the law schools and juristic traditions. Al-Ghazālī pointed out some of those traces in the *naṣṣ* and *ta'wīl*. Even statements that fulfilled the requirements of an explicit denotation (*naṣṣ*) allowed ample scope for interpretation due to semiotic uncertainty. In the instances where al-Ghazālī disagreed with his schoolmen or other scholars, the dispute was premised on different definitions of *nass* itself. A statement was deemed a *naṣṣ* by one of his definitions, but did not have qualify in terms of his ideal definition. By means of the techniques of hierarchy, juxtaposition and epistemological transgression, al-Ghazali allowed himself the opportunity to make subjective choices within the confines of a rigidly defined

---

[86]*Mu*, 1:401.

[87]Goodrich, *Languages of Law*, 120.

theoretical discourse of language and legal theory. A similar observation was made by Frank regarding al-Ghazālī in another context. "He is not trying to deceive the reader," says Frank after a close reading of one of al-Ghazālī's theological texts, "but rather, in a way that conforms to the convention of the traditional manuals, to offer to each that which he is most apt to receive with understanding."[88]

Indirectly though, al-Ghazālī did indicate that the reason for his elimination of certain interpretations was that they did not fulfil certain objectives (*maqāṣid*) which he had set for them. These objectives are not supported by explicit textual authority but by inferences and implication. Unlike the later Andalusian jurist al-Shāṭibī, who developed an entire metatheory of the objectives of the revealed law (*sharī'a*), al-Ghazālī did not declare that his legal philosophy was based on ethical goals and public interest concerns. He was content, rather, to engage in minor epistemological transgressions, such as inventing or privileging certain definitions acceptable to his taste. Indeed, he contended that juristic disagreements were largely a matter of "taste" or "faculty". His introduction of "taste" in his legal discourse bears scrutiny. He repeatedly reminded his readers that all his proposed interpretations were open and discretionary issues. His euphemism for openness was his repeated statement that these were matters for independent reasoning and juristic discretion (*ijtihād*) and an instance where the Arabic language itself allows for discursive latitude (*tawassu' fī kalām al-'arab*).[89] Over and above these, but also in the form of an unobtrusive esoteric sentence, he informed his readers "that every controversy (*mas'ala*) has a particular faculty or taste (*dhawq*)."[90] Few statements in the classical and scholastic

---

[88]Richard M. Frank, *Al-Ghazālī and the Ash'arite School* (Durham: Duke University Press, 1994), 42.

[89]*Mu*, 1:408.

legacy of jurisprudence can be so forthright in admitting the subjective element in legal judgement and interpretation.

There is also a larger story that unfolds which can be traced on the pages of *al-Mustaṣfā*. Al-Ghazālī held al-Shāfiʿī in high esteem as an Arab and as an expert in Arabic language, especially his mastery of the Arabic idiom and its application.[91] At the same time, in a dialectical irony as shown by his veiled criticism of al-Shāfiʿī's interpretation, he implies that the latter's literal interpretations were due to a lack of an appreciation of the semiotic latitude of the Arabic language. One wonders whether al-Ghazālī's search for semiotic latitude stemmed from language-use itself or whether it was not a product of his inscription - grammatology - of the language. For surely, al-Shāfiʿī ought to have been aware of the flexibility of the language?

Al-Shāfiʿī himself had made a strong case for the preservation of the Arabic language, especially his insistence on the learning of the language of revelation for devotional purposes. The Arabism of al-Shāfiʿī was perhaps the ideological factor which compelled him to insist that *zakāt* on animals could only be given in animal equivalents, and to insist on the Arabic reading of the chapter called "The Opening" (*al-Fātiḥa*) in prayers. The non-Arab Abū Ḥanīfa, on the other hand, allowed non-Arabic speakers to recite the Qur'ān in its various translated forms in ritual prayers if they did not know the Arabic version, and allowed the tax on animals to be given in any form.

---

[90]*Mu*, 1:410.

[91]*Mu*, 2:194.

Al-Shāfiʿī's ideology of primitive Arabicity also became the foil whereby he could frustrate the attempts of the, mainly Kufan non-Arab law school known for promoting informed judicial opinion (*al-raʾy*), *kalām* and the rational disciplines. Al-Shāfiʿī's aim was to maintain a counterbalance in order to neutralise the hegemony that quarters sympathetic to rational and foreign sciences might establish within law. When studying his writings, one can virtually see al-Shāfiʿī's discourse being generated in a polemical code against the Kufan rationalists. To limit the scope of rationalism in law for instance, al-Shāfiʿī considered the vocable (*lafẓ*) and signification (*maʿnā*) as inseparable. In other words, the very texture of the revelatory language had - in al-Shāfiʿī's view - to be accepted as an intrinsic and substantive part of the explicit denotation (*naṣṣ*) itself. Conversely, Abū Ḥanīfa perceived revelation as primarily signification (*maʿnā*) alone, and the question of the vocable was a secondary issue. In this latter scenario, the modalities of interpretation had greater latitude much to the chagrin of al-Shāfiʿī, whose own ideological ends were well served in promoting a philosophy of language that did not permit the separability of word and meaning.

In this larger debate al-Ghazālī found himself trapped between two competing loyalties. The one was his loyalty to the Shāfiʿites born of the patronage he enjoyed from Shāfiʿite/Ashʿarite quarters.[92] The other was his loyalty as a Persian - akin to a foreigner-status in the Arabic world at the time (like Abū Ḥanīfa) - which made him repudiate some of the views of the founder of his school as well as certain purist tendencies of the Shāfiʿī school.[93]

---

[92]See chapter on biography of al-Ghazālī.

[93]In the *al-Munqidh*, al-Ghazālī says that if there are any shortcomings in his language use people should feel free to correct it. His insecurities as a non-Arab certainly surfaces.

In his discussion of *bayān*, al-Shāfiʿī limited the role of discursive reason and tried to generate a logic of rhetoric. In his reflections on *nass* and *ta'wīl* al-Ghazālī does something similar where he lavishly develops his rhetoric. The terms: *nass*, *zahir*, *mu'awwal* are in reality tropes, in which words and phrases are used in such a way as to effect a conspicuous change to their standard meaning. Instances where al-Ghazālī demonstrated the shades of interpretation are perhaps better seen as a rhetoric of tropes or a rhetoric of ambivalence. The effect of this rhetoric is the unconscious subversion of utterances couched in seemingly straightforward constative terms into ambiguous and inconclusive discourse even though the entire project was to create certainty.

Conclusion

From al-Shāfiʿī to al-Ghazālī, and perhaps to this very day, the debate on the nature and function of language is far from settled. We have seen that legal theory (*uṣūl al-fiqh*) is both a kind of rhetoric and a particular form of discourse with its own history. Moreover, legal theory deals with the rhetoric and discourse of religious language expressed as the speech of God.

An examination of the linguistic topoi of a section of al-Ghazālī's language debate - *naṣṣ* and *ta'wīl* - shows that these linguistic categories function as tropes. There exists both an economy of certainty (*naṣṣ*) and an economy of uncertainty (*ta'wīl*) in the discourse. *Naṣṣ* and *ta'wīl* have pretensions of being regulated by objective rules, but the subjectivity and linguistic arbitrariness in their function is evident. These tropes function within a linguistic system or grammar of law, destabilising the precise meanings of posited utterances and rendering them undecidable in constative terms. Their meanings are suspended between performatives and constatives. These tropes themselves were the products of a specific type of language use at a particular time. They became tropes because of the way they gave

effect to a conspicuous change in meaning. The subsequent use of these tropes and others, as part of a way of languaging about law, was arrived at by metalepsis, as past effects of present causes. The intention is clear: to linguistically reproduce the past.

A close reading of the Ghazalian text shows that the language of Islamic legal theory has a grammatology, a history of systems of inscription and signs. The "arche writing" and "trace" of ideological, political and discursive inscription cannot be denied.

The legal language of al-Ghazālī is, to a large extent, apodictically predetermined in order to fit the theological requirements of al-Ghazālī's ideology. Utilising the themes of original positing, al-Ghazālī succeeded in arguing a position of determinism within language in the same way that determinism was supported in theology. Al-Ghazālī's conclusion on the origins of language, neither entirely revelatory nor entirely conventional, illustrates this point. However, there is also a part of legal language which is not apodictically predetermined and allows for the play and influence of social meanings. This then produces a creative tension between apodicticity and the evolution of *uṣūl*-linguistics.

Despite ceaseless effort on the part of al-Ghazālī to create typologies, definitions and micro and macro structural hierarchies of language, they have not been seen to play any substantial role in constructing and constituting the language of legal theory. They appear to be purely for the purposes of the "external" management of language. This reveals that al-Ghazālī held tenaciously to the binary distinction between the inner and outer dimensions of language, the distinction between vocable and signification. In short this was a kind of linguistic dualism. Al-Ghazālī unfailingly wavers between the binary relations of theology and discursivity, objectivity and

subjectivity, certainty and uncertainty, linguistic nominalism and the materiality of language.

Chapter 5

Meaning and the Metaphysics of Presence

Introduction

The French philosopher, Jacques Derrida, has argued that the metaphysics of presence pervades Western philosophy.[1] It is his contention that philosophers rely on the assumption of an immediately available area of certainty, a search for that which is immediately present. Derrida denies this presence in that there is no present in the sense of a single definable moment which is 'now." The realm of the independent signified does not exist and we are unable to escape a system of signifiers. It is this presumption of presence that has given priority to speech (phonocentrism) over writing, because of the erroneous belief that it implies immediacy. Writing is considered to be hopelessly mediated. Derrida's ambition to deconstruct the opposition between speech and writing is linked to uncovering the metaphysics of presence.

These presuppositions of a metaphysics of presence can also be detected in the Muslim philosophical tradition. Al-Ghazālī's relentless effort in legal theory was to create a language which could guarantee the delivery of both truth and certainty. He felt that the Arabic language was a key factor in facilitating these goals, but admitted an Islamised version of Aristotelian logic inserted into the surface of language. What he did not account for was that language itself was mediated, both through speech and writing. It was a constellation of signs that referred to each other and differed from each other in a process of signification.[2]

---

[1]Derrida, *Of Grammatology*, .

[2]Robert W. Benson, "Semiotics, Modernism and the Law," *Semiotica* 73 no. 1 and 2 (1989).

I will examine some of those elements in al-Ghazālī's legal theory that disclose that language is mediated by a variety of techniques and assumptions. I will first examine al-Ghazālī's treatment of contextual semes (*qarīna*), figurative language (*majāz*) and perspicuous declaration (*bayān*), and explore how these signify meaning. Thereafter, I will attempt to uncover the metaphysics that underpin the notions of discourse (*khiṭāb*), inner speech (*kalām al-nafs*) and the relationship between law and writing in juridical language.

Contextual Semes: *Qarīna*

Hermeneutical interpretation in Islamic legal theory relies heavily on meanings that are not necessarily apparent but may be intended. Therefore contextual semes (*qarā'in*) play such an important role and warrant some reflection to uncover whether al-Ghazālī believed that language was mediated.

A contextual seme or contextual indicator (*qarīna*) is a verbal or non-verbal element clarifying a part of speech extraneous to itself.[3] The contextual indicator (*qarīna*) is in effect, a contextual seme in legal hermeneutics. It is the semiotic sense that directs the attention of the hermeneut to an appropriate semantic meaning.[4] Al-Ghazālī stated quite categorically that:

> there is many an interpretation (*ta'wīl*) that does not avail itself except by the ellipsis of an contextual indicator (*qarīna*), even if such a sign is not reported.[5]

Al-Ghazālī held that a contextual seme could be:

---

[3]*Mu*, 1:339; Wael B. Hallaq, "Notes on the term *qarīna* in Islamic legal discourse," *Journal of the American Oriental Society*, 108 no.3 (1988): 475-480.

[4]*Mu*, 1:388.

[5]*Mu*, 1:388.

(1) an exposed vocable

(2) a rational indicant

(3) signs indicating conditions, habitat or atmosphere

Al-Ghazālī provides several illustrations in support of his assertions. An exposed vocable (*lafẓ makshūf*) is the verse: "And give [unto the poor] their due on harvest day (Q. 6:141)." An example of a rational indicant (*dalīl al-ᶜaql*): "And the heavens will be rolled up in His right hand (Q 39:67)." Another is the statement of the Prophet which says: 'The heart of the believer is between the two fingers of the Compassionate One."[6] In al-Ghazālī's view, these statements were understandable within the context of their utterance without having to resort to a figurative interpretation.

Contextual semes of condition (*aḥwāl*) are endless as indicators (*ishārāt*), symbols (*rumūz*), movements (*ḥarakāt*), precedents (*sawābiq*) and antecedents (*lawāḥiq*). They were perceived by observers, the Companions of the Prophet and their Successors, who communicated with these contextual indicators in mind. If the sense of these indicators was implicit, then necessary knowledge (*ᶜilm ḍarūrī*) compels us to understand the intended meaning. Contextual indicators are applicable to those instances where there are no lexical prescriptions. Even those theological and legal schools who do not accept the validity of a general statement (*ᶜām*) or that of an imperative (*amr*), manage to arrive at such a sense by means of contextual indicators.

There are also occasions when the contextual indicators compete with legal syllogism (*qiyās*) as evident in the case of Abū Ḥanīfa who gave preference to the latter. Whenever the resultant meaning of an analogy is in conflict with the obvious

---

[6] *Mu*, 1:340.

meaning of a text, it is the collective meaning of contextual indicators that plays the decisive role, according to al-Ghazālī. Contextual indicators are capable of producing a meaning favourable to the obvious meaning of the text, in opposition to that of legal syllogism (*qiyās*).[7] This is an allusion to the opinions of jurists on the differences in the value of a determinant indicated through analogy and a determinant indicated through words. One can infer that al-Ghazālī the jurist seemed to favour the semantic and semiotic dimension of legal theory above the logical, in spite of his stated claim that logic was the key to the understanding of legal theory.

Metaphor: (*Haqīqa*) Literal and (*Majāz*) Figurative Expressions

Some contextual semes have over time developed specific peculiarities and uses. The most prominent is the use of metaphor. In an earlier work *al-Mankhūl*, al-Ghazālī dealt with literal (*haqīqa*) and figurative (*majaz*) discourse.[8] In *al-Mustaṣfā* he limited himself to a brief overview of his earlier views and admitted to the role of *majāz*-expressions in the study of legal language. Its opposite, *haqīqa*, was a homonym (*mushtarak*) which could convey the essence of something (*dhāt al-shay'*) or the proper sense of speech (*haqīqat al-kalām*).[9]

With reference to words, a *haqīqa* expression is one where the vocables are used to convey an assigned meaning at origin. When the Arabs do not use a word in the sense of the original coinage, it is a figurative or *majāz* expression. *Majāz*-

---

[7]*Mu*, 1:392.

[8]Abū Ḥāmid al-Ghazālī, *al-Mankhūl min Taʿlīqāt al-Uṣūl*, (ed) M. Haytu, (Damascus: Dār al-Fikr, 1980/1400) 85.

[9]*Mu*, 1:341.

expressions generally appear in three primary forms, according to al-Ghazali.[10] The first form results from a "borrowing" (*isti*ᶜ*āra*) of meaning as a result of a resemblance and similarity of qualities between two things, for example, referring to a brave person as a "lion," or to a stupid person as a "donkey." These are also called tropes, meaning "turns" or "conversions." The second form is the result of an "excess or surplus" (*ziyāda*) of meaning, which is not utilised for the purpose of signification. If the word is used in a context where it does not signify, then it is contrary to its original positing. For example the Arabic preposition "*ka*" denotes the signification of a simile, "like" or "similar." But with reference to God, in part of the verse *"laysa kamithlihī shayʾ"* (... there is nothing *like* unto Him, Q. 42:11), the letter "*ka*" does not denote the meaning of a simile, since comparing and creating similarities with God and non-God would be considered to be theologically offensive. The word "*ka*" denoting "like" in this instance, has therefore surplus meaning. The third form originates from a verbal economy (*nuqṣān*) which does not invalidate understanding. An example is the verse: "Ask the village," meaning, "ask *the people* of the village (Q. 12:82)"! The Arabs are accustomed to this type of verbal ellipsis. An inanimate object or an abstract concept is spoken of as though it were endowed with life or human attributes or feelings, as the "village" in the above example. This figure is related to the metaphor of personification and is known by the Greek term, *prosopopeia*. *Majāz*-expressions are also identifiable by their linguistic uses, forms and grammatical compositions.[11]

On the question of *majāz*, the Ashᶜarites tried to adopt a middle position between the Muᶜtazilites who espoused it, and the Jabarites who rejected it. The Ashᶜarites agreed to use *majāz* as a substantive instrument of interpretation. The point of departure between the Ashᶜarites and the Muᶜtazilites was their disagreement on the

[10]*Mu*, 1:341-2.

[11]*Mu*, 1:342.

extent to which the *majāz*-expression could be legitimately employed in the interpretation of divine revelation.[12]

An assessment of al-Ghazālī's works on interpretation, especially esoteric interpretation such as in *Jawāhir al-Qur'ān* (*Gems of the Qur'ān*) and *Mishkāt al-Anwār* (*Niche of Lights*), would reveal that the referential notions of *haqiqa* and *majaz* had been subjected to a particular intellectual undertaking. In these works the terminology is inverted from the general use of these terms. A *haqīqa*-expression is considered to be that which refers to the non-sensory world (*ʿalam al-malakūt*), whereas this world is signified as the "prison of *majāz*."[13] Ormsby concludes that a scrutiny of al-Ghazālī's original Persian writings on Sufism discloses his perception that everything else enjoys a figurative (*majāzī*) existence, only the existence of God is real (*haqīqī*).[14]

The fact that al-Ghazālī did not continue in this vein in his penultimate work raises the question as to whether or not he had abandoned his previous views on *majāz*.[15] A possible explanation for this dissonance here between al-Ghazālī the jurist and the *ṣūfī* may be quite simple. A *ṣūfī* approach is probably inappropriate in the study of the law, where precise definition of both the meaning and interpretation of the words is paramount. To imply in the very practical study of law that the world was

---

[12]Naṣr Ḥāmid Abū Zayd, "Markabat 'al-majāz': man yaqūduha? wa ila ayna?," in *Alif: Majallat al-Balāgha al-Muqārana (Alif: Journal of Comparative Poetics)*, 12 (1992): 55.

[13]Abū Zayd, "Markabat," 62. Also see A. J. Wensinck, *La Pensée de Ghazzālī* (Paris: Adrien-Maisonneuve, 1940), 95-97.

[14]Eric Ormsby, *Theodicy*, 55 citing Abbas Iqbal ed. *Makātib-i farsi-yi Ghazzālī bi-nām-i Fadā'il al-Anām min Rasā'il Ḥujjat al-Islām* (Tehran:1954/1333), 20.

[15]Ormsby notes that Louis Massignon claimed that al-Ghazālī had abandoned his controversial position on the "perfect rightness of the world" for instance, offering the works, *al-Iqtiṣād fī al-Iʿtiqād* and *al-Mustaṣfā* as evidence, *Theodicy*, 61.

not 'real" but figurative, would have paved the way to antinomianism which al-Ghazālī wanted to avoid.

Nevertheless, if *majāz* was perceived as a problematic notion in legal discourse, knowledge of the nature of ambiguity, and how this ambiguity could be removed would have been welcomed by jurists who were positivistically inclined. Al-Ghazālī did indeed wish to remove ambiguity and to achieve this end he used the notion of perspicuous declaration, *bayān*.

Perspicuous Declaration (*Bayān*): Indeterminate (*Mujmal*) and Determinate (*Mubayyan*)

Ambiguity and indeterminacy is the supreme problem for the jurist in order to discover God's rule. Therefore, the a perspicuous declaration is required to dispel such ambiguity. A statement can be rendered ambiguous by several instances such as a homonym, ambiguous antecedents to ambiguous non-literal meanings. In order to dispel ambiguity, al-Ghazālī makes a binary distinction between nouns that have an assigned meaning and nouns which have an acquired meaning through customary usage. Where an assigned meaning creates ambiguity he would use a customary sense of the word to dispel the ambiguity and arrive at the intended sense of the word, and vice versa.

Al-Ghazālī used this binary distinction to rebut the arguments of his theological opponents. The Qadarites argued that substances (*aʿyān*) *per se* cannot have the attribute of prohibition (*taḥrīm*). They believed that it was the *actions* related to the abuse of a substance, which were declared prohibited.[16] Al-Ghazālī avoids this

[16]*Mu*, 1:346.

perfectly legitimate argument, which distinguishes between substances and attributes, and draws for the purposes of his own defence on the customary determination of language. When a customary usage of the language conflicts with the assigned and semiotic use of the word, then custom trumps all other meanings. He did not justify why custom should gain precedence over epistemological concerns. This is not only an arbitrary method of dismissing a legitimate refutation of his stance; it could also be viewed as an attempt to insert the customary determination of language into the structure of language. One can only speculate that the pre-eminence of custom in language, as in several other instances of Islamic law, is justified on the grounds that it is an instance of material reality and pragmatism which could be tolerated as long as such reality does not conflict with revelation. The following verse is a useful illustration: 'Prohibited for you is carrion..."[17] The Qadarites argued that this verse was indeterminate since it was not clear whether the prohibition referred to the eating, selling or handling of carrion. While al-Ghazālī indirectly admitted that it was the action, and not the substance which was prohibited, he argued that the customary use of the word made the intended sense clear, that eating was prohibited and nothing else.

Similarly, al-Ghazālī invokes custom in the use of language in explaining the tradition: 'Error and forgetfulness has been eradicated from my community."[18] The phrase of the tradition (*ḥadīth*) in question is not a *universal* statement which provides indemnity from all errors of omission. What this phrase meant and how it was understood in the customary usage (*ʿurf al-istiʿmāl*) prior to the "arrival of the revelation" (*qabla wurūd al-sharʿ*) would be the criterion for understanding this phrase. According to al-Ghazālī, it was understood that the effect of certain action(s) will be excused in religion. But this phrase was never meant to give *carte blanche*

[17]*Mu*, 2:173.

[18]*Mu*, 1:347-8.

indemnity to all possible contingent acts of omission. To understand certain phrases, said al-Ghazālī, one had to search for an appropriate contextual indicator that makes the intended sense clear and should therefore treat elliptical statements as having several possible senses. For example, in the verse: "Prohibited to you are your mothers (Q. 4:23)" the only appropriate intended sense was that "intercourse" with one's mother was the prohibited action.

Al-Ghazālī also used the category of perspicuous declaration to address the crucial issue of negation. By way of illustration, he cited some of the many prophetic statements which says : "No prayer except with the Opening of the Book"; "No prayer for the neighbour of the mosque except in the mosque." This negation of prayer and other acts had been the subject of considerable controversy among jurists.[19] The question was: does it mean that if prayers were performed in a house close to the mosque, or without the Opening chapter being recited, that these acts ceased to be acceptable acts? It was to know what type of negation had taken place that was of interest to al-Ghazālī. Statements of the order of "No *ṣalāh* except by...," "no action...," "no error...," were in his view partially indeterminate. The negation was not a negation of the "form" (*ṣūra*) of these acts but more a negation of their objectives (*maqāṣid*), especially the objectives of the *sharī'a* terms. The approved view, according to al-Ghazālī, is that the negation is evident (*ẓāhir*) in the negation of soundness (*ṣiḥḥa*) of acts with the possibility of the negation of perfection of these acts in terms of an interpretation. It does not matter to what extent legal fasting had been obtained, if it was not sound in terms of its objectives of virtuosity and perfection, then there was no fast. Al-Bāqillānī takes an extreme view and says that these statements of negation are indeterminate (*mujmal*). That means that an absence of virtue and

[19]*Mu*, 1:351-52.

perfection in the stated acts of fasting and prayer, for example, was tantamount to the negation of the act itself.

There is a dispute among the experts whether a general statement (*ʿumūm*) is an evident statement (*ẓāhir*) or indeterminate (*mujmal*). These statements 'No prayer...," 'No marriage..." are general and involve the negation of both the cause (*mu'atthir*) and effect (*athar*). Even if the negation only extended to the cause, then the effect would disappear with the cause.

It becomes clear that al-Ghazālī did not make a distinction between the form (*ṣūra*) and effect (*ḥukm*) of utterances, in the same way that the Muʿtazilites did in order to create equivocation. For him the technical conventions of the revelation (*ʿurf al-sharʿ*), the conventions of language-use (*ʿurf al-istiʿmāl*) and the conventions of language (*ʿurf al-lugha*) can all be effective at different levels. Terms like prayer (*ṣalāh*), fasting (*ṣawm*), ablution (*wudū'*), marriage (*nikāḥ*) had their meanings defined by the revelation (*sharʿ*). Hence, there was no uncertainty about the meaning of these revelatory terms (*al-asāmī al-sharʿiyya*). Therefore, when statements of a negative order were uttered it meant the very act of prayer (*salāh*) or marriage (*nikāḥ*) was denied. For this reason al-Ghazālī said it was absurd (*khalfan*) to assume that only the form (*ṣūra*) of acts were denied, and not the act *per se*.[20] In taking this stance, he clearly wished to rebut the equivocation created within language by the Muʿtazilites.

Such a linguistically determined reading certainly suited al-Ghazālī's *ṣūfī* tendencies. It clearly promoted the idea within the structure of the revealed law (*sharīʿa*), that a religious act which failed to fulfill its objectives (*maqāṣid*) had implicitly ceased to be a recognised religious act.

---

[20]*Mu*, 1:352.

Al-Ghazālī also made the point that in some instances a word having a defined meaning (*ḥukm mutaḥaddid*) was not necessarily superior to a word which might have been subjected to several registers of meaning even if it had an authentic meaning (*al-ḥukm al-aṣlī*), a rational meaning (*al-ḥukm al-ʿaqlī*) or a lexical meaning (*al-ism al-lughawī*).[21] In other words, some instances are simply pregnant with ambiguity, and he believed, that the very fact of their ambiguity was a virtue. To say that the revealed (*sharʿī*) meaning should gain priority in signification is an arbitrary preference, as there is no evidence that the Prophet did not use words in a rational or lexical meaning in order to explain things. Al-Ghazālī gave several examples to show that a word could be ambiguous in several respects at the same time. Surprisingly, al-Ghazālī did not wish to obviate these ambiguities. The example he cited was the statement of the Prophet: 'Two and above constitutes a gathering (*jamāʿa*).'"[22] There are several possible interpretations. It could have meant that more than two is called a gathering; a *jamāʿa* had a minimum of two; or that the virtue of a *jamāʿa* was acquired with more than two persons. In his discussion of ambiguous statements (*mujmal*), al-Ghazālī attempted to prove that the Prophet did not make frivolous and ineffectual statements. But, when faced with a statement which said: 'circumambulation (*ṭawāf*) around the *kaʿba* is prayer (*ṣalāh*)," he explained that *ṣalāh* in this context was an ambiguous (*mujmal*) statement since it did not signify the normal ritual prayer.

Al-Ghazālī's treatment of contextual semes, figurative language and perspicuous declaration was straightforward with no real departures from the standard positions on these issues. In dealing with indeterminate words he did, however, develop the meaning of the negation to coincide with his concerns as a *ṣūfī*. When prayer and other acts of worship are negatived in texts, then al-Ghazālī reads these as

---

[21]*Mu*, 1:356-57.

[22]*Mu*, 1:357.

the denial of the essence of even though the forms may legally still be present. Thus when one reads al-Ghazālī carefully, one cannot but notice that there is something more than the materiality of meaning. There is also, I believe, a metaphysics of meaning which is the referent of the material world, characteristic of logocentric discourse. The description and examination of this metaphysics will be pursued in the rest of this chapter.

Method of Understanding the Intention of Discourse (*Khiṭāb*)

According to al-Ghazālī we can only understand the meanings of letters, sounds and invented languages because of our prior knowledge of the primordial positing of language (*bi sabab taqaddum al-maᶜrifa b'il muwāḍaᶜa*).[23] Al-Ghazālī said that the communications prophets or angels hear from God and from angels were not in the form of letters, sounds, or a conventional language. Therefore, the recipient of such messages was not required to be familiar with the conventions of language. In normal speech one understands the intentions of speech only when God creates within the recipient immediate knowledge (*ᶜilm darūrī*) by three means:

(1) through a speaker

(2) hearing from His speech;

(3) understanding the intentions of His speech[24]

Speech and sound of a revelatory nature are, however, not comparable to what is normally understood by these terms. It is similar, said al-Ghazālī, to expecting a blind person to imagine the perception of colours and forms.[25] What prophets hear of divine speech (*kalām Allāh*) via angels is probably carried in "created" voices as part of the

---

[23]*Mu*, 1:337.

[24]*Mu*, 1:337-38.

[25]*Mu*, 1:338.

work of angels "without the essence of speech" (*dūna nafs al-kalām*) being created.[26] Al-Ghazālī illustrates his point with an example. When one says "I heard the speech of Allah" (*kalām allāh*) it is similar to saying "I heard the poetry of al-Mutanabbī." The fact is that one did not actually "hear" the voice of al-Mutanabbī but did hear the voice of someone else who recited his poetry, or heard the mind's voice, or one's own voice if one read the poetry oneself. In other words, the "essence of speech" is attributed to al-Mutanabbi the poet, while the utterances were created by the reader of his poetry.

In addition to the theological contortions, al-Ghazālī's discourse was hopelessly phonocentric in that speech was assumed to create immediate and certain knowledge. It also created a binary distinction between an essence of speech and a non-essence. Al-Ghazālī introduced the notion of the essence of speech and created sounds and words. Superficially, it may sound convincing, but the relationship between an essence and a non-essence of speech has to be mutually interdependent; the one is inherent in the other. In al-Ghazālī's example, this mutuality is precisely intended to eliminate one type of speech for theological purposes.

Psycho-linguistics: Inner Speech (*Kalām al-nafs*)

The nature of the speech that we hear raises the crucial issue of the nature of the original divine speech. Al-Ghazālī's discussion of the latter makes it possible for us to interrogate the metaphysical assumptions he holds on divine speech. The nature of God's speech had been the subject of extensive theological debate between the Mu^{c}tazilites and the Ash^{c}arites. The latter held that God's speech and revelation emanated from His eternal attribute of speech, without beginning and end. Hence, the

[26]*Mu*, 1:339.

speech of God (*kalām Allāh*), according to the Ash^{c}arites, was eternal and uncreated. On the other hand, the Mu^{c}tazilites held that God's speech stood entirely within the created order. They often asked the Ash^{c}arites whether the letters and sounds that made up God's speech in a recitation also had the quality of eternity. In response to these very cogent ideas, the Ash^{c}arites developed the notion of "internal speech," "speech of the heart or psyche" (*kalām al-nafs*) in opposition to "phonic speech," (*kalām al-lafẓ*) or, "speech of the tongue" (*kalām al-lisān*). This duality of speech, echoing the duality of the essence and non-essence of speech corresponded to the duality present in all languages: the duality of meaning (*ma^{c}nā*) and the emitted sound (*lafẓ*), signified and signifier.[27]

Al-Ghazālī also supported the notion of psychic or inner speech, *kalām al-nafs*, in effect conceding to the Mu^{c}tazilite critique that language is not absolutely transparent.

> It is a speech which is located (*al-qā'im*) with the essence of Allah (*bi dhāt allāh*) the Sublime. It is an eternal attribute from amongst His attributes. And *al-kalam* is an equivocal or homonym (*mushtarak*) noun. It could mean those words that signify what is in the mind/soul (*nafs*). Like you would say: "I heard the speech of someone and his eloquence." Or, it could mean the signified (*madlūl*) of expressions (*^{c}ibārāt*), which are significations (*ma^{c}ānī*) located in the mind/soul. As it was said by (the poet):
>
> Speech lies in the heart (*fu'ād*)
> And surely the tongue has been made a sign
> of what is in the heart ...[28]

Admitting the notion of "inner speech" (*kalām al-nafs*) as a characteristic of the word of God, opens up the discursive space for the theological reception of God's speech in Ash^{c}arite and later Sunnī religious discourse. As the contemporary Egyptian

---

[27]Bernard Weiss, "Exoterism and Objectivity," in *Islamic Law and Jurisprudence*, ed. Nicholas Heer (Seattle & London: University of Washington Press, 1990), 54

[28]*Mu*, 1:100.

scholar Abū Zayd points out, the Mu'tazilite insistence on the createdness of the word involved an ideological project. For them it was not so much a matter of the createdness of the divine word but what concerned them was the ends and consequences of such a notion.[29] The rationalist trend viewed the human being as the object of revelation, whereas in the Ash'arite belief in the uncreatedness of the divine word, the human subject disintegrated in the face of revelatory discourse.

The Ash'arites admitted in the end that revelation was essentially 'the discourse of the soul" (*kalām al-nafs*). 'The attribute of the Word, subsisting in the divine Essence, is first and foremost this internal Word of God, which is eternal and uncreated, without future or past, without multiplication or division."[30] God then made this manifest *ad extra* by created sounds and letters. The inference to be drawn from such a conclusion was that the revelation at hand, in the form of created words, was a signified of the psychic speech. In this way, Ash'arism opened for itself a small window to admit the role of the created dimension of revelation, namely 'phonic speech" (*kalām al-lisān*). By means of a sleight of hand al-Ghazālī tells us that the phonic speech of revelation is not actually the revelation, but that the 'real" speech is the 'inner speech" which is the essence of the phonic speech. In other words, when one says the Qur'ān is the word of God one says so figuratively and not literally. Otherwise, one has to bear in mind the essence/non-essence duality of all speech not admissible inreference to God. In this way the revealed text is exposed to its worldliness in legal theory. The irony was that despite Ash'arite protestations against the notion of the createdness of the divine word, all their subsequent methodologies, both hermeneutics and epistemology, appreciated the worldliness of the text. From time to time, however, there was a relapse into the apodicticity of the theological.

---

[29]Abū Zayd, *Mafhūm al-Nass*, 277.

[30]Louis Gardet, "*Kalām*," in *Encyclopaedia of Islam*, 2d ed.

Al-Ghazālī then introduced another, but important, distinction between "speech of God" (*kalām allah*) and 'inner speech" (*kalām al-nafs*). The 'inner speech" or 'the speech inherent in the mind," in other words the 'meanings" of phonic words are mirrored by predicates, inquiries, commands, prohibitions and admonitions.[31] The meanings were the mimesis of the phonic words, or depending what came first, the phonic words were the mimesis of the 'mind words," to coin a neologism, or 'idea words" as Rahman preferred to call it.[32] If the speaker of revelation is God, then the internal speech also belongs to the realm of eternity. But al-Ghazālī was compelled to explain the difference between "inner speech" and the "speech of God."

> The speech of God is one. And in addition to its unicity, still comprehensively contains the multiple 'entities of discourse" (*maʿānī al-kalām*), which is similar to His knowledge being one. Yet, he still comprehends the infinite to the extent that not an atom's weight can escape His knowledge in the heavens or the earth. It is a complex understanding, and the task of explaining this is that of the theologian, not the legal theorist (*uṣūlī*)... [33]

'Inner speech" is variegated and multiple. Each human being has a peculiar inner speech which is not communicable except via letters and signs. God's inner speech is something different.[34] The difference is that God can communicate inner speech without the mediation of letters and signs. Divinity creates within the recipient the necessary knowledge (*ʿilm darūrī*) which constitutes the communication. Similarly, 'hearing" is also created without sound, letters or signification. Whoever hears such a communication has 'certainly heard the speech God" and it is this communication which we call prophetic revelation.[35] When that very speech is heard from the mouth of a Prophet, or an angel, it would still be correct to call it speech of God.

---

[31]*Mu*, 1:100.

[32]Rahman, *Islam*, 31.

[33]*Mu*, 1:101.

[34]*Mu*, 1:101.

[35]*Mu*, 1: 101.

The distinction drawn by al-Ghazālī between *kalām al-nafs* and *kalām allāh* was significant. Contrary to the belief of the Muʿtazilites, who stated that the speech of God was created within bodies, al-Ghazālī argued that it was indeed God who spoke, but through sounds and letters belonging to the world of creation which was manifested in His single and immutable word.[36] Al-Ghazālī makes the point that internal speech, "according to us [humans]," is multiple.[37] We then have to assume that God's inner speech is multiple. The singularity of the "speech of God" (*kalām Allāh*) signifies universal volition (*irāda*), whereas the multiplicity of "inner speech" (*kalām al-nafs*) signifies the multiple cognitions (*ʿulūm*). In other words, the universal speech of God allows for variations of cognitions and different times and places.[38]

Al-Ghazālī introduced this interesting debate on the "inner speech" in a legal text without overtly making the connection to phonic speech (*kalām al-lafẓ*). Law is virtually exclusively the realm of the latter. The sources of law in the form of phonic speech are constantly constrained by the hidden operations of the inner speech which theologises language.

Law and Writing

From the earliest times, law has been inscribed and codified, be it chiseled on stone, scratched on vellum or written in books. The nature of the relationship between law, writing and power is a very complex relationship. Writing serves several

[36]Gardet, "*Kalām*."

[37]*Mu*, 1:101.

[38]This type of explanation clearly sets the scene for theoretical legitimation of abrogation (*naskh*) and also explains the different revelations sent at different times to different prophets.

functions.[39] It suggests the availability of law but also acts as a restraint on its interpreters. But writing also creates the need for interpreters, a priestly and professional class of interpreters and commentators. As a written text, it requires a special pedagogy and authoritarian mode of teaching. And so writing makes it possible to encode and veil legal rules.

"Whoever does not wish to write down this introduction [on logic] should instead start this book from the first axis (*al-quṭb al-awwal*)," said al-Ghazali in the opening parts of *al-Mustaṣfā*.[40] Is writing the transparent and neutral transmission of words? If writing was as indifferent as it is assumed, why offer your audience the choice to write down the introduction to logic? These questions seek answers especially when the sentence prior to that warned that a failure to comprehend logic would impair one's understanding of legal theory.[41]

Clearly, al-Ghazālī intimated that writing was a form of languaging and imagining the world, even if in this instance he only meant the writing of logic. His theoretical attempt to separate the controversial introduction to logic from his repertoire on legal theory, but in practice insist on its inclusion, in itself discloses what he was hiding. He was trying to suppress an admission, that the nonverbal signs - location of the introduction, giving students of law a choice to take down the dictation of the section on logic as well as the hidden context - would all contribute to the reader's understanding of the world of controversy in which he lived. He was concerned that his espousal of Aristotelian logic and engagement of *kalām*, would reveal his motives and fears. In addition, it was an indirect admission that language

---

[39]Peter Goodrich, *Reading the Law: A Critical Introduction to Legal Method and Techniques* (Oxford: Basil Blackwell, 1986), 21.

[40]*Mu*, 1:10.

[41]*Mu*, 1:10.

was a series of gestures or performances that encoded and veiled the context of utterances.

What was al-Ghazālī's understanding of writing? If we take into account that according to him, the primal form of revelation was 'inner speech," then there is much to say about the native unity of voice and writing. Legal theory, or the language of law in general, carries the legal tradition and becomes the grammar of a juristic community and the rule of their speech. But preceding that grammar of law, is an unwritten writing or pre-given script of the inner speech doctrine affecting the revealed word. This unwritten writing, known as "arche writing" or "trace" acts as an imprint of the past on the present.[42] In grammatological terms language is always marked by the past even if this was not strictly written. This language has been articulated prior to any phonic linguistic substance. This metaphor, termed as God's writing, inner speech or speech of the heart, is the "good writing" which then 'founds the 'literal' meaning subsequently given to writing. It is "a sign signifying a signifier itself signifying an eternal verity, eternally thought and spoken in the proximity of a present logos."[43] The nontemporal writing is named by metaphor and the sensible and finite is described as writing in the literal sense.

> Of course, this metaphor remains enigmatic and refers to a "literal" meaning of writing as the first metaphor... It is not, therefore, a matter of inverting the literal meaning and the figurative meaning but of determining the "literal" meaning of writing as metaphoricity itself... [44]

The various tropes employed by al-Ghazālī in "harvesting the fruits" from its sources were the equivalent of the "literal" meaning of the metaphoricity of language itself. Contextual semes, figurative language and perspicuous declaration produce

---

[42]Derrida, *Of Grammatology*, 17.

[43]Ibid., 15

[44]Ibid.

meaning using a variety of tropes. These tropes - *naṣṣ, ta'wīl, kināya-* pretend to have a propositional character, but in effect they are rhetorical tropes of the metaphoricity of language itself. They stood as testimony to the struggles over meaning in the "text of Islam" whether those be the Qur'ān and Sunna texts, or legal, theological and philosophical texts.

The medieval opposition between signifier and signified cannot be maintained without calling into play its metaphysico-theological roots of distinguishing between the sensible and the intelligible. To end this distinction is to end the very idea of the sign, and is, at least for the present necessary, since nothing is conceivable without them: "The sign and divinity have the same place and time of birth. The age of the sign is essentially theological. Perhaps it will never end."[45] So when al-Ghazālī wrote about the language of law in *al-Mustaṣfā*, it is the exteriority of writing, the debased and vulgar form of writing to which he referred. For all the rhetorical tropes had inwardly pointing referents to meanings and sequences of meanings that were not immediately visible at the level of the sensible, only at the level of the intelligible.

Conclusion

A crucial component of legal theory is the interaction, reception and interpretation of revealed speech. The theological trail of this debate is not inconspicuous in the presumptions of al-Ghazālī when he dealt with language issues. While the revelatory discourse is primarily the "inner speech" (*kalām al-nafs*), there is also the possibility of it being "the speech of the tongue" (*kalām al-lisān*) or phonic speech, in another sense. The result is that the revealed language, Qur'ān and Prophetic speech, are subjected to theologised methodologies, the arche-writing

[45]Derrida, *Of Grammatology*, 14

predetermined by the past. According to al-Ghazālī these dynamics were visible from the very origins of language and ended with the binary opposition of phonic speech (*kalām al-lafẓ*) and psychic speech (*kalām al-nafs*).

Beyond the sleight of hand of supplements, there also seemed to be a clear binary play in al-Ghazālī's approach. One can make the case that al-Ghazālī, in his search for innovation, creativity and renewal was constantly faced by boundaries and limitations of different kinds. In the larger picture of his life, he was faced with the dilemma of choosing between order and disorder, stability and instability. These formed the parameters of his dualistic world and the binary semiotic world. This binary opposition manifests itself doggedly in a close reading of the section on language in *al-Mustaṣfā*. One can enumerate them as perspicuous declaration vs indeterminacy; original positing vs conventional and technical usage; explicit denotation vs interpretation and contextual semes; literal vs figurative; and, phonic speech vs psychic speech. The parts of the binary pairs inheres in each other and are not rigidly separated, in the same way that life cannot be compartamentalised. This was well demonstrated al-Ghazālī's metaphysics where the same speech can be phonic speech in one instance, and by making an imaginary move it can also be psychic speech.

Chapter 6

The Dialogics of the Determinant (Ḥukm) and Discourse (Khiṭāb): The Poetics of Goodness, Detestability and Liability

Introduction

According to Ibn Salāḥ: 'The [Shāfi'ī] school to which he [al-Ghazālī] belonged did not approve of several things in his writings, as well as his idiosyncratic practices."[1] He added:

> Especially his remark about logic that, 'it is the introduction to all knowledge and whoever fails to grasp it their knowledge should not be trusted." This stands completely rejected. Every person of sound mind is naturally [endowed with] logic anyway. And how many a leading scholar (*imām*) did not even raise their head to the discipline of logic![2]

Al-Māzarī, one of al-Ghazālī's sharpest critics said: 'al-Ghazālī mixed the beneficial with the harmful."[3]

Al-Ghazālī attempted to assimilate a *melange* of ideas and doctrines into his work and, unwittingly, may have camouflaged his originally intended ideas with the result that his readers deduced something resembling their opposite from this synthesis.[4] Possibly, he was not in a position to notice the ambivalences which seemed to erode the very assertions he was making. If this is the case with al-Ghazālī, then it is the task of the commentator to untangle the web of significant misinterpretation by a process of deconstruction to bring to light what remained imperceptible to the author and his followers. The commentator must

---

[1]ʿAlī Sāmī al-Nashshār, *Manāhij al-Baḥth ʿinda Mufakkirī al-Islam wa Naqd al-Muslimīn li al-Manṭiq al-Aristatālisī* (Cairo: Dār al-Fikr al-ʿArabī, 1367/1947), 140; al-Dhahabī, *Siyar*, 19:329.

[2]Ibid.

[3]Ibid., 19:330.

[4]See Marie Bernand, "Al-Ghazālī, Artisan de la Fusion des Systemes de Pensee," *Journal Asiatique*, 278, (1991): 231-51 passim.

therefore focus on the ambivalent knowledge discovered in *al-Mustaṣfā*, as already examined in the previous section on language.

This chapter will interrogate the ambivalence and tensions that are noticeable in al-Ghazālī's epistemology as a result of his attempted synthesis of disciplines and the diversity of his intellectual sources. It will deal with the *raison d'etre* of legal theory, namely the discovery of the determinant/assessment/rule of law (*ḥukm*). For, indeed, legal theory provides the theoretical and methodological framework that will direct the jurist to the primordial determinant (*ḥukm*) which emerges from the detailed sources of the law.[5]

As critical as the discussion of the *ḥukm* is, there is very little reflection on what it is and how it becomes discernable. It is assumed that once the method of legal theory is applied to a body of sources the output is automatically the *ḥukm*. In this sense the *ḥukm* is treated as a ruling of positive law, whereas it may be more than that. On closer investigation, the *ḥukm* is intimately related to the nomothetic discourse (*khiṭāb al-shar*^{c}), a theologically complex concept which alludes to the material with which the jurist works. The dialogics of the *ḥukm* and *khiṭāb* in al-Ghazali's work will be examined. *Dialogics* for the purposes of this thesis, is used in the Greek etymological sense of 'dia-logue' or cross-play between arguments. It is also used in the sense of juxtaposition of points of view in the struggle for the hegemonic control of interpretation as to how the world should be seen.[6]

Once the *ḥukm* has been identified, the question of how and why one should be compelled to comply with that determinant arises. The answer should be, at the very least, that it would be desirable to view and shape the world in that particular way. This,

---

[5]Muḥammad Abū Zahra, *Uṣūl al-Fiqh* (Cairo: Dār al-Fikr al-^{c}Arabī, n.d.), 8; ^{c}Abd al-Wahhāb Khallāf, ^{c}*Ilm Uṣūl al-Fiqh*, 4th ed., (Beirut: Dār al-^{c}Ilm, 1401/1981), 12; *Mu*, 1:5.

[6]Fischer and Abedi, "Texts, Con-Texts, and Pre-Texts," in *Debating Muslims*, 95-149 passim.

however, leads to the crucial question of how things are identified as being either good or detestable in Muslim theology. Having decided one way or another, the question of establishing liability imposes itself. In the discussion of juridical ethics, which includes the debate on the goodness and detestability of things, and the notion of liability, there is a tension between human freedom and intellect when these concepts come into any sort of conflict with divine determinism and revelation.

The ethics of Muslim jurisprudence exhibit qualities which are both poetic and enigmatic. A survey of this debate in the *al-Mustaṣfā*, will clarify al-Ghazālī's understanding of how humans should be held liable to divine injunction via texts and other sources of religious authority.

On *Ḥukm* and *Khiṭāb*: Determination and Discourse

Al-Ghazālī, in keeping with the views of al-Ash^{c}arī, [7] said:

> ... a determination, according to us, expresses the nomothetic discourse in its relationship with acts of those made responsible (*inna al-ḥukm ^{c}indana ^{c}ibāra ^{c}an khiṭāb al-shar^{c} idhā ta^{c}allaqa bi af^{c}āl al-mukallafīn*)[8]

In general Islamic legal theory (*uṣūl al-fiqh*) a *ḥukm* is concerned with establishing and authorising those indicants that provide access to the primordial assessment (*ḥukm*). In Islamic discourse, the word *ḥukm* is used in two senses. Firstly, it is used in the sense of the primordial *ḥukm*, the divine determination. Its second usage is in the sense of positive law, where *ḥukm* means a decision or ruling of a judge.

---

[7] Muḥammad b. al-Ḥasan al-Badakhshī, *Manāhij al-^{c}Uqūl* (Beirut: Dār al-Kutub al-^{c}Ilmiyya, 1405/1984), printed with *Nihāyat as-Su'l*, 1:40, says that the *shar^{c}ī* meaning of *ḥukm* according to al-Ash^{c}ari is *khiṭāb Allāh*.

[8] *Mu*, 1:55.

Khiṭāb, is a "dictum," "speech," "discourse," "voice" of the revelation (*shar*ᶜ). In the second *quṭb* al-Ghazālī wrote:

> Know that once we have realised by speculative reasoning (*al-naẓar*) that the source (*aṣl*) of determinations (*aḥkām*) is only one, namely, the statement of Allah the Sublime, then the statement of the Messenger of Allah is not a determination (*ḥukm*) [on its own], nor [is such a statement] binding in any sense. [More accurately] he [the prophet] is an informant from Allah the Sublime, that He determined this or that. The determination [of things] belong to Allah alone.[9]

The term nomothetic discourse (*khiṭāb al-shar*ᶜ), encompasses linguistic as well as non-linguistic conceptual elements of language. The nomothetic discourse constitutes five positive commands which govern the actions of those who are made morally responsible (*mukallafūn*): interdiction (*ḥarām*), duty (*wājib*), permission (*mubāh*); exhortation or recommendation (*nadb*) and disapprobation (*istikrāh*).[10] These commands are indispensable, according to al-Ghazālī, who adds: "If there is no such nomothetic discourse by the Lawgiver (*shāri*ᶜ) then there is no determination (*ḥukm*)."[11]

Like so many other concepts, such as *sharī*ᶜ*a*, the terms *khiṭāb* and, to a lesser extent the term *hukm* do not seem to have precise definitions.[12] It appears that they did not

---

[9]*Mu*, 1:100.

[10]*Mu*, 1:55. Al-Ghazālī only mentioned the first three commands in his main discussion on the topic, but later acknowledged the function of *nadb* and *istikrāh*.

[11]*Mu*, 1:55. In places I have used the translation of Kevin Reinhart, "Before Revelation: The Boundaries of Muslim Moral Knowledge" (Ph.D. diss., Harvard University, 1986) of a section of *al-Mustasfā*.

[12]Al-Ghazālī says that if there is no nomothetic discourse there will be no command. He then says: "Therefore we say:

(1) reason does not commend (*yuḥassin*) nor detest (*yuqabbiḥ*)

(2) nor does it make thanking the benefactor obligatory

(3) nor is there a determination (*ḥukm*) for an act before the arrival (*wurūd*) of the revelation

arouse any significant controversy and extensive debates on these topics.[13] Al-Ghazālī, himself, is extremely cryptic and offers no explanation of either *ḥukm* or *khiṭāb*. Therefore a necessary digression would be to place these concepts in perspective.

In Arabic, *hukm* literally signifies 'prevention" or 'restraint." [14] In the technical sense it came to mean a 'judgement" or 'judicial decision" and also signified 'judgement with equity or justice."[15] 'So *ḥukm* comes to mean," says Schacht, 'the authority, imperium, of the Islamic government and, on the other hand, the judgement of a *kāḍī* on a concrete case."[16] Reinhart says that depending on the context, the term *hukm* has been used in at least four senses:

(1) the commonplace sense of the word

(2) the sense in logic

(3) the positive law (*fiqh*), or syllogistic (*qiyās*) sense

(4) the legal theory (*uṣūl al-fiqh*) meaning[17]

In the general sense of the word, *ḥukm* is plainly 'the linking of one thing with another." [18] In other words, any predication is a determination or judgement. In logic, it is used in the English sense of 'to determine," the categorization of a thing. *Ḥukm* in the logicians'

(*shar*^{c})." (*Mu* 1:55.)

[13]See my "Application of Muslim Personal and Family Law in South Africa: Law, Ideology and Socio-Political Implications" (M A. diss., University of Cape Town, 1988); also see Reinhart, "Before Revelation," 299, who observes that "like the term *shari*^{c}*a*, *khitab* is so much taken for granted as a concept that it seems to have aroused little of the controversy that leads to lengthy exposition and precise definitions."

[14]Lane, *Arabic-English Lexicon*, 1:617.

[15]Ibid.

[16]Joseph Schacht, "Aḥkām" and A.M. Goichon and H. Fleisch, "Ḥukm," in *Encyclopaedia of Islam*, 2d ed..

[17]Reinhart, "Before Revelation," 278.

[18]Ibid., citing Tahānawī, 278-9.

sense is not conceptual, but real: "*ḥukm reflects* reality, and does not *make* it."[19] In the positive law (*fiqh*) meaning a *ḥukm* is effectively A or B. Here it means judging or judgement. Reinhart argues that in this sense a *ḥukm* is both a determination of fact and a categorization of an act.[20]

It is interesting to note that *ḥukm*, in the sense of legal theory has a slightly different meaning to those discussed above. Al-Juwaynī described *al-ḥukm* as, *huwa al-ījāb*, 'rendering or declaring something binding, decided, effectual, determined."[21] Al-Juwayni added: 'and that is permissible in reason (*al-ʿuqūl*) and the revelation (*al-sharīʿa*)."[22] Al-Badakhshī (d. 716/1316) gave the literal meaning of *ḥukm* as 'relating or connecting (*isnād*) one thing to another, positively or negatively."[23] This is also al-Ashʿari's definition that al-Ghazālī adopted, which is that a *ḥukm* was the nomothetic discourse of God (*khiṭāb Allāh*) which is related to actions of human beings.[24] It also signified the contact between the divine and the temporal. Al-Isnawī (d. 772/1370) expressed this connection by stating that nomothetic discourse meant the 'inner speech" (*al-kalām al-nafsānī*), which constituted the revealed determinant (*al-ḥukm al-sharʿī*).[25] An important dimension of *khiṭāb* is that there must be an element of interactive appellation (*al-takhāṭub*).[26] The reason for this is that making someone apprehend (*ifhām*) or making someone understand is not attained in isolation, but through dynamic interaction.

---

[19]Ibid., 279.

[20]Ibid.

[21]Abū al-Maʿālī ʿAbd al-Malik b. ʿAbd Allāh al-Juwaynī, *al-Kāfiya fī al-Jadal*, ed. Fawqiyya Husayn Maḥmud (Cairo: ʿIsā Bābī al-Halabī, 1399/1979), 70; Lane, *Arabic-English Lexcion*, 2:2922.

[22]al-Juwaynī, *al-Kāfiya*, 70.

[23]al-Badakhshī, *Manāhij*, 1:40.

[24]Ibid.

[25]Ibid.

[26]Ibid., 1:41.

Al-Juwaynī said that determinations (*aḥkam*) could be known by two means: *al-khabar* (transmission or reports) or, *al-naẓar* (discursive reasoning). [27] He also substituted these two terms - *khabar* and *naẓar* - with *qalb khiṭāb* ("essence" or 'heart" of the discourse) and *maʿnā* (intention/meaning). *Khiṭāb* has several synonyms like speech (*kalām*), conversation (*takallum*), talk (*takhāṭub*), utterance (*nuṭq*), which all mean the same thing in terms of the 'real nature of the lexicon' (*haqīqat al-lugha*).[28] *Khiṭāb*, said al-Juwayni, was 'that by which the living becomes a speaker.'[29] It was also reported (*qila*) that its

> ... real nature is that from which the command (*amr*), prohibition (*nahy*) and the nominal (*khabar*) is understood. If one of these [three] are understood, all is assumed to have been understood.[30]

Al-Juwayni expanded on this by adding that nominality, a command or prohibition could not be understood *from* writing (*kitāba*) and verbal expressions (*ʿibāra*), even though the content of each was comprehended *by means* of writing and verbal expression.[31] He was explicit in pronouncing that writing and verbal expressions were not speech (*kalām*), but were only figuratively (*majāzan*) considered to be speech, since they are the *means* to understanding speech.[32] In other words, *khiṭāb*, is more than just writing or expressions. From al-Juwaynī's explanation, it becomes clear that *khiṭāb* is a 'living speech," where the phonic is privileged above the graphic. Part of its polysemy are the elements of "voice" (*takallum/nuṭq*) and "mutual discoursing" (*takhaṭub*).

---

[27]al-Juwaynī, *al-Kāfiya*, 88.

[28]Ibid., 32.

[29]Ibid., al-Juwaynī says *"wa huwa ma bihi yasiru al-ḥayyu mutkalliman."*

[30]Ibid., 32 al-Juwaynī explained that every *amr* is also a *nahy* and *khabar*; every *nahy* is an *amr*; and every *khabar* is an *amr* and *nahy*.

[31]Ibid., 33.

[32]Ibid., al-Juwaynī says *"liannahu yufhamu bihima al-kalām."*

Authorities of legal theory make a distinction between *khiṭāb* and *kalām*. *Khiṭāb* requires an addresser (*mukhāṭib*) and addressee (*mukhāṭab*), as opposed to *kalām*, where the expression on its own is sufficient.[33] *Khiṭāb* can only occur when there are voices which construct the discourse to an addressee capable of understanding it.[34] Literally, discourse (*khiṭāb*) means "directing speech towards the other in order to communicate" (*tawjīḥ al-kalām naḥw al-ghayr li al-ifhām*).[35] Al-Isnawī defined *khiṭāb* as the "discourse which directs" (*al-khiṭāb huwa al-tawjīh*).[36] He added, that the nomothetic discourse, (*khiṭāb Allāh*) "directed that which was instructive to a listener, or one who substituted a listener" (*tawjih ma afāda ila al-mustamiʿ aw man fī hukmihī*).

Al-Qashwānī correctly noted that the definition: "a determinant is the nomothetic discourse of God" (*al-ḥukm huwa khiṭāb Allāh*) was circular because each element of the definition was predicated and contingent on the understanding of the other.[37] In Piercian terms this would be regarded as an enthymeme.[38] An enthymeme is a term from classical rhetoric which describes an argument that presupposes, (i.e. does not make explicit) both the major and minor premises, and the conclusion. These presuppositions are part of the public knowledge and as community property form the foundation for conventional meaning. In fact, it was Peirce's genius which discovered that, in essence, all propositions are hypothetical and that all arguments are enthymemic. This enthymemic inquiry necessitates our investigation of the presuppositions of *khiṭāb* and *ḥukm*.

---

[33]Jamāl al-Dīn ʿAbd al-Rahīm al-Isnawī, *Nihāyat-al Su'l* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1405/1984) printed with *Manāhij al-ʿUqūl*, 1:42.

[34]al-Isnawī, *Nihāya*, 1: 42.

[35]al-Badakhshī, *Manāhij*, 1: 41.

[36]al-Isnawī, *Nihāya*, 1: 41.

[37]Ibid., 1: 45.

[38]Kevelson, *Law as Signs*, 5.

A summary of al-Baydāwī (d. 685/1286) and al-Isnawī's discussions will illuminate the relationship between *ḥukm* and *khiṭāb*. Al-Isnawī made use of al-Baydāwī's notion of a *ḥukm* as 'the discourse of Allah which is related to the acts of those who have been made responsible in terms of requirement or choice" (*al-ḥukm khiṭāb Allāh taᶜalā al-mutaᶜallaq bi afᶜāl al-mukallafīn bi al-iqtiḍā awi al-takhyīr*). Al-Baydāwī further explained that the primordial *ḥukm* attached itself to the act of a person. Irrespective of whether the act of attachment (*al-taᶜalluq*) is deemed to be temporal (*ḥadīth*), the *ḥukm* itself is not temporal, but primordial.[39] At the same time he emphasised that the *ḥukm* is *attached* (*yataᶜallaq*) to the *acts* of persons and is not a temporal *description* of the acts. This clarification is designed to remove the confusion which had arisen in trying to establish judicial acts such as marriage (*nikāḥ*) and repudiation (*ṭalāq*) as being *aḥkām*. In effect, they are "disclosers" (*muᶜarrifat*) of the *ḥukm*, analogous to the proposition that the existence of the world discloses the existence of the Creator.[40] Similarly, words that indicate the obligatoriness (*al-mawjabiyya*) and impediment (*al-manᶜiyya*) of things and acts, are actually signs (*aᶜlām*) of the presence of a determinant, not identical to the determinant.[41]

Al-Isnawī argued that the primordiality of the *ḥukm* is proved via the following example. It is understood, for instance, that intercourse with a woman becomes permissible after marriage (*nikāḥ*), since prior to that intercourse is not permissible. The primordial *ḥukm* in this statement was God's word in eternity which said: 'I permit such a man to have intercourse with such a woman if there is a marriage (*nikāḥ*) between them."[42] In other words, the primordial *ḥukm* is arrived at by ellipsis. That *ḥukm* becomes operative and effective when the parties mutually declare their offer (*ījāb*) and acceptance (*qabūl*) in

---

[39]al-Isnawi, *Nihaya*, 1: 48.

[40]Ibid.

[41]Ibid.

[42]Ibid., 1:50.

a marriage contract. At *that* moment, the *ḥukm* is attached to the act, bearing in mind the earlier clarification that only the *act of attachment* is characterised to be temporal, and not the *ḥukm*. There is therefore no harm in a temporal act giving effect or providing visibility to a primordial *ḥukm*, in the same way that temporal "signs" (*ʿalām*) and "disclosers" (*muʿarrifāt*) serve as indicators of the primordial *ḥukm*. Similarly, legal causes (*ʿilal*) such as marriage, repudiation, buying, hiring etc. are "disclosers" (*muʿarrifāt*) of the primordial *ḥukm*, and not identical to the *ḥukm*. This was the basis for al-Isnawī's comment that a *ḥukm* is not the discourse in itself, but is the indicant of the discourse (*anna al-ḥukma ghayru al-khiṭābi al-mawṣūfi bal huwa dalīluhū*).[43] For example, the divine discourse: "Establish prayer!" (Q. 17:78) is not in itself the obligation to prayer, but is the signifier/indicator (*dāll*) of obligation.

What then is the substantial difference between a determinant (*ḥukm*) and an indicant/signifier (*dalīl*)? Al-Badakhshi offered an explanation. A determinant, he said, was that "inner speech" which coincided with the infinitive meaning, *(al-ḥukm: al-qawl al-nafsī ʿalā ma yunāsibu al-maʿnā al-maṣdarī)*.[44] An indicant or signifier is a verbal statement which is appropriate to the meaning of the object, *(al-dalīl: al-qawl al-lafẓī al-munāsib li maʿnā al-mafʿūl)*.[45] This confirms the earlier observation that the *ḥukm* was somewhat hidden and elliptical. It is discovered by a search, but there is no confirmation that the search had been correct, according to the prevailing view among Ashʿarites, except the general assumption that consensus would guarantee some amount of rectitude.

Reinhart says that in the *uṣūl al-fiqh* sense, a *ḥukm* "means the categorization of the act in relation to the actor by reference to another source of information; it is not, in the *sharīʿa* system, a categorization of the act per se...," at least not in the view expressed

[43]Ibid., 1:44.

[44]al-Badakshī, *Manāhij*, 1:49.

[45]Ibid.

by the Ash'arites.[46] The *ḥukm* is the primordial saying that 'this is permissible," 'this is prohibited." More specifically, it is actually the determinant and knowledge of the fact that God had said in eternity: 'Let this be permissible," or 'let this be prohibited." There is a difference between saying: 'serving your fellow human being is good," and saying 'let service to your fellow man be a good thing." In the first statement service *per se* is declared a good thing. If service could speak it would say: 'I am good." In the second statement the act of serving is declared a good thing from the perspective of the one saying it is good. In this case service cannot declare itself to be good; someone must declare it. It admits the possibility that the speaker (God) could on another occasion say that service is not a good thing. In other words, the voice behind the statement is privileged. The goodness or detestability of a thing is determined by an assessor by making reference to another source. This means that the status of a thing is dictated by the hidden and elliptical divine voice. Reinhart calls it the dictation of status.[47]

The reason why *khiṭāb* should take the form of a 'verbal speech" *al-kalām al-lafẓī* is that the primary objective is to make the communication understood (*ifhām*) to the addressee. And, because of this it is imperative to make the discourse manifest (*ibraz*). The verbalization of the discourse is necessary for it to be understood in human, or, more correctly, in phonological terms. However, the proper discourse is the inner speech (*al-kalām al-nafsī*) which, in addition to being God's uncreated and primordial speech, provides the interactive and dialogic sequence. In a broad sense, *khiṭāb* must be characterized by certain features of cohesion and unity to distinguish it from other forms of communication, as well as other types of *khiṭāb*. The search for the *ḥukm* is restricted to the textual space, known as the *khitab*, wherein the *hukm* dwells. The *khiṭāb*, to borrow a phrase from Kevelson,

---

[46]Reinhart, "Before Revelation," 280.

[47]Ibid.

> ... is a unified discourse held together by a ruling theme, by a nonambiguous system, of cross-reference, and by certain implications, or presuppositions, which permit deleted verbal phenomena to be recovered in so-called deep structure analysis.[48]

Khiṭāb is that communication of God to human beings which enables them to understand (*ifhām*). The *khiṭāb* and *ḥukm* of God are brought into a relation of "meaning equivalence" through an argument of equivalence. The divine rule (*ḥukm*) is not to be identified *simpliciter* with the Qur'ān or the Sunna.[49] It is the function of the epistemological methodology of legal theory to attempt to grasp the message of the communication. When this message is known, God's determinant (*ḥukm*) is discovered. The discovery of the *ḥukm* is the discovery of the non-verbal primordial statement of God. In this sense it is an ongoing revelation or disclosure that God makes to the reader in general, and the jurist in particular.

Ashʿarite legal theorists went to great lengths to prove the primordiality of the *ḥukm* and *khiṭāb*. Only the "attachment" or "linkage" of the *ḥukm* to the human act is a temporal one. In other words, there is an immediacy and timeliness of divine intervention or revelation of the *ḥukm* at every moment when a moral act is undertaken by those who had been made morally responsible. When one speaks of *ḥukm* as a *khiṭāb*, one is describing it in terms of its timeliness. On the other hand, the divine determinant is also characterised by a timelessness. It is when one describes the *ḥukm* as the "inner speech," that the timelessness of the *ḥukm* is described. *Khiṭāb* is then the contextual, interactive discourse whose primary function is to search for indicators (*adilla*) and declarations (*bayānāt*) in their right order. If the above is accepted, then there is a metaphysical

---

[48]Kevelson, *Law as Signs*, 59.

[49]The modern Iraqi Shite scholar Bāqir al-Ṣadr (d. 1980) had adopted a revisionist position on *usul al-fiqh*. Al-Ṣadr pointed out that *khiṭāb* "discloses" (*kāshif*) or signifies the *ḥukm*. In turn, the *ḥukm* is the signified (*madlūl*) of the *khiṭāb*. In other words, the *khiṭāb* is the signifier (*dāll*) and the *ḥukm* is the signified (*madlūl*). See *al-Maʿālim al-Jadīda li al-Uṣūl*, (Beirut: Dār al-Taʿāruf li al-Maṭbūʿāt, 1401/1981), 99.

argument which supports the notion that *khiṭāb*, is the nomothetic communication of God. How this discourse manifests itself to the addressee remains one of the most understudied areas of legal theory.

Khiṭāb as Speech Event

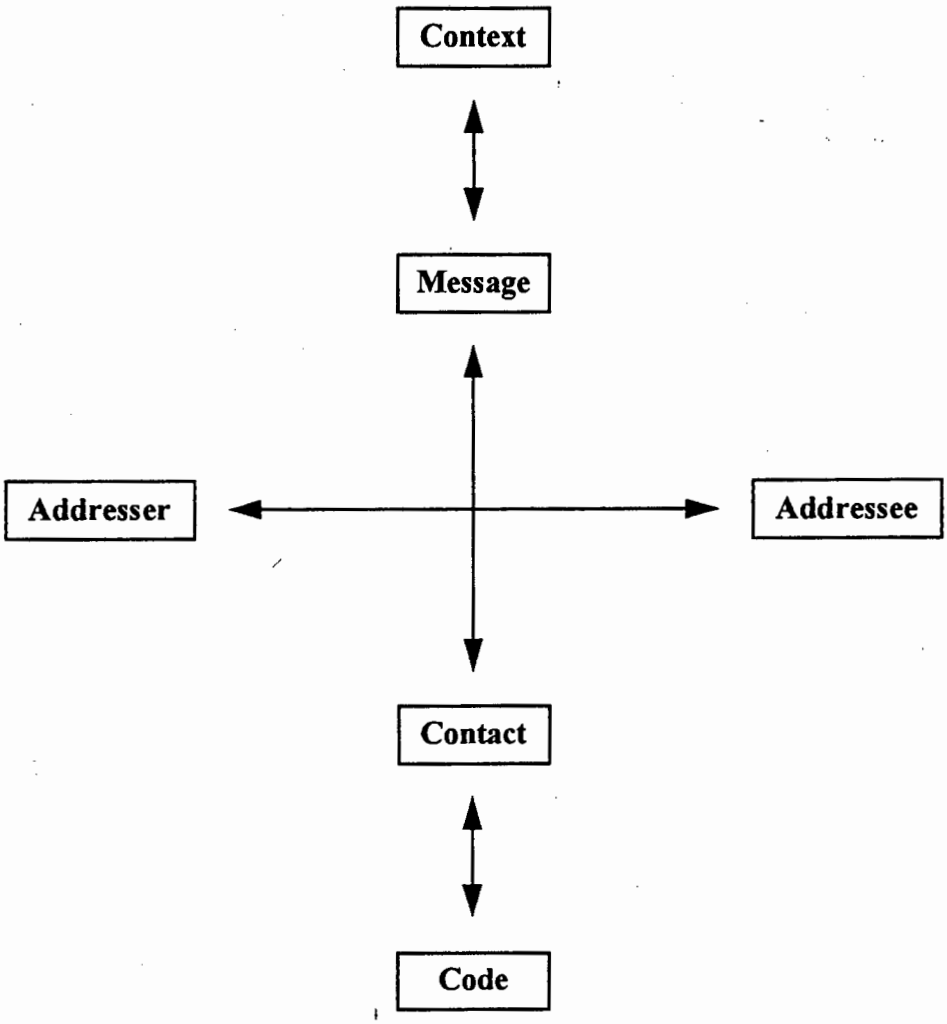
It would be instructive to consider the proposition that *uṣūl al-fiqh* is a high register of Islamic legal language in terms of Roman Jakobson's framework for speech events, or any verbal communication.[50] The fundamental axis of this framework is that an "*addresser*" sends a message to an "*addressee*." In order to be operable, the message firstly requires a "*context*" to which it refers - the physical and social world in which the speech event is located spatially and temporarily. Secondly, the addressee must grasp that verbal "*message*" or be capable of verbalizing it - both the addressee and the addresser must share the same "*code*," language or signs, at least partially. And finally, there has to be a "*contact*," the physical channel or psychological connection between addresser and addressee which enables the communication to take place. (See diagram for the illustration of the constituent elements of communication.)

It must be pointed out that the meaning of the communication does not have existence independent of the constitutive elements described above. In fact, the meaning is discursively determined by these elements. So the *ḥukm* the jurist searches for involves all the elements of an addresser, addressee, the message, context, code, and contact. Together these elements make manifest the *ḥukm*, the divine signified, which is greater than the individual elements in themselves.

---

[50]Roman Jakobson, *Selected Writings III*, "Linguistics and Poetics," ed. Stephen Rudy (The Hague: Mouton Publishers, 1981), 21-29. I am grateful to professor Tom Bennett for pointing out to me the relevance of Jakobson to this aspect of my work.

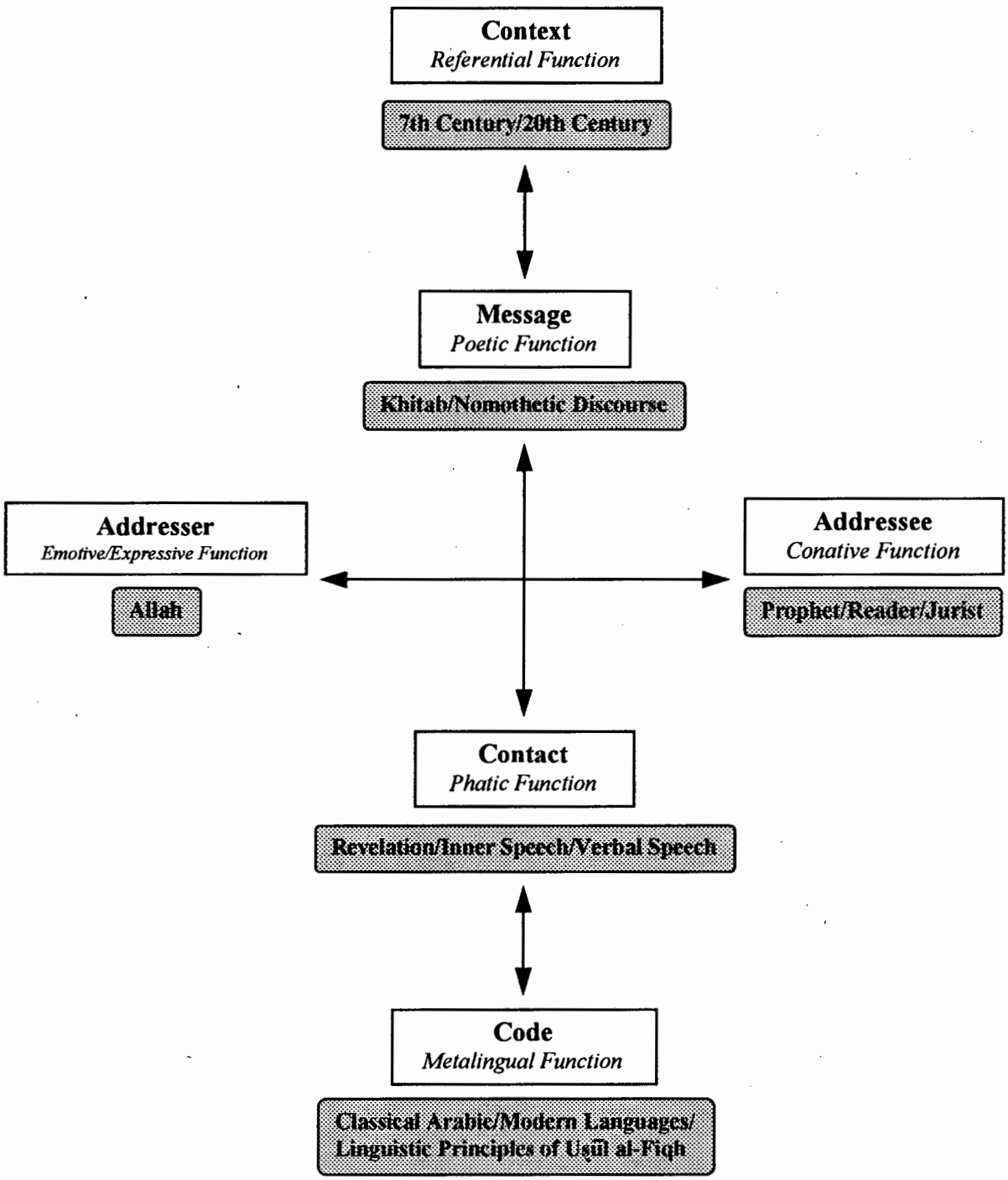
Jakobson's Framework for Speech Events



Jakobson says that while the six elements in communication are not isolated, the function of language or communication depends on the preponderant function. If the emphasis of the communication is on the context, then the function is referential. The emotive function or expressive function occurs when the focus is on the addresser. When the focus is on the addressee, such as by use of the imperative: "drink!," the function becomes conative. The emphasis on contact, especially in dialogue, such as: "Are you listening"? or "Well"! is an endeavour to sustain the conversation and is called the phatic function. Whenever the addresser or addressee have to check whether they use the same code, the speech is focused on the code and then the function becomes metalingual - e.g.: "I do not follow you, what do you mean?" or "Do you know what I mean"? The focus on the message for its own sake is the poetic function of language, which is the dominant function in verbal art. The nomothetic discourse (*khiṭāb*) of Islam, be it in the form of the Qur'ān or *ḥadīth*, will involve a variety of these functions.

Ever since the English jurist, John Austin (d. 1859) held that law is the command of the sovereign, many scholars of Islamic law have been tempted to emphasise the primacy of the conative function, given the role of the imperative in Islamic jurisprudence. But to describe Islamic law as the command of the Divine Sovereign, as is often done, would be an oversimplification. When speech acts are combined with a type of Austinian reading of law there is a tendency to analyse legal discourse from a deontic position, where law is only a series of commands and where the logic of obligation and permission applies. In our exploration of *al-Mustasfā* it was clear that legal speech is not simply a catalogue of commands, but rather a complex mix of interactions and of various subjects, loci of commands, and elements, which together constitute the legal communication. Legal discourse can also be erotetic when it follows a communicative or, question and answer logic, and not a deontic logic of commands only. While some elements of legal discourse may be deontic, other propositional elements, such as a determinant or obligation, are signs of certain verbal structures which convey meaning through their rhetorical force.

Legal Theory as a Speech Event



Hence, the legal discourse involves a combination of these functions and not necessarily the poetic or conative functions alone. Given the insights gained regarding the discovery of the *ḥukm*, it is inevitable that the referential function provided by the context will play an equally significant role as that performed by the poetic function.

Ferdinand de Saussure drew our attention to the distinction in language itself between *langue* and *parole*, translated as language and speech, respectively. *Langue* is the abstract and implicit system of elements, sounds and rules which are shared by a language community independent of time. *Parole* is any particular utterance, spoken or written, as it exists in time.[51] In relation to the *langue* of *uṣūl*, the *parole* of revelation (*khiṭāb al-shar*^{c}) includes the signifier (*dāll*) and signified (*dalīl*) to constitute the uncreated and primordial determinant (*ḥukm*), the *langue* of the revelation.

Al-Ghazālī stated that, 'the determinant expresses the dictum of the *shar*^{c} " (*al-ḥukm* ^{c}*ibāra* ^{c}*an khiṭāb al-shar*^{c}), meant that the nomothetic discourse alone is the source of the determinant. Not even the verbal statement of the Prophet constitutes the *khiṭāb al-shar*^{c}, which he pointed out, was the equivalent of information about the nomothetic discourse, but not coterminous with it. Therefore, al-Ghazālī was quite clear that the determinants in themselves were completely independent from the choice of the master-jurist (*mujtahid*).[52] The determinants (*aḥkām*) pre-exist the choice of the jurist. What does coincide with his choice is that the determinants make themselves visible at the point of choice. Whether one's choice determines the status of an act as good or detestable is a totally different question, to which our discussion now turns.

---

[51]M. H. Abrams, *A Glossary of Literary Terms* (Fort Worth: Holt, Rinehart and Winston, Inc, 1985), 214-15.

[52]*Mu*, 1:315.

Goodness and Detestability

Al-Ghazālī's notion of the good and detestable was consistent with the dominant Ash'arite position on this doctrine, evidently developed through polemics with Mu'tazilite opponents. His position on this doctrine must be discussed in the context of the views of the contesting groups.[53]

The Basran Mu'tazilites believed that the good and the detestable are the essential attributes of *some* goods or things. Some things were seen to be either good or detestable by virtue of their essential properties. Properties, such as truth, justice and honesty which were categorised as good, and oppression and dishonesty categorised as detestable were so because reason and necessary knowledge (*'ilm ḍarūrī*) encompassed these without proof. They were independent of anyone's will, even God's and did not need to be commanded nor prohibited by God: this view is classed as objectivism.[54] However, there is another class of properties which vacillate between being beneficial and harmful in an ambiguous manner, and so their goodness or detestability become relative attributes. These become good or detestable by virtue of the command of revelation.

Another group of Mu'tazilites and the Imāmiyya Shī'ites, argued that reason only decreed things to be good or detestable if these two properties were essential to them. The latter two groups differed from the Basran Mu'tazilites, in that they believed that liability (*taklīf*) became effective with the advent of revelation and prophecy. On those issues on which revelation was silent, reason would dictate the good or detestable attributes of the things.

---

[53]Ismā'īl R. al-Fārūqī, "The Self in Mu'tazilah Thought," *International Philosophical Quarterly*, 6 no.3, (1966): 382.

[54]George F. Hourani, "Two Theories of Value in Early Islam," in *Reason and Tradition in Islamic Ethics* (London: Cambridge University Press, 1985), 57.

The third position, that of the scholars of *kalām* headed by Abū Manṣūr al-Māturīdī (d. 333/945), posited that some things had essential attributes of goodness and detestability and that God did not command or prohibit such acts or goods, respectively. This was also believed to have been the jurist, Abū Ḥanīfa's position. The scholars of *kalām* differed from the Mu'tazilites in that they held that liability, reward and damnation could not be established by reason alone, but should be decided by revelation and prophetic authority. Whenever revelatory authority was absent they would resort to syllogistic analogy. Some scholars have objected to this position, saying that by conceding to the limitations of reason, and associating reward and punishment with good and bad acts does not in itself amount to anything. There is no inherent relationship between the essential properties of things and their being linked to reward or punishment. At best, it could be said that someone who did good was praised, and one who did the opposite was condemned.

The fourth position is that of the traditionalists (*ahl al-ḥadīth*), including al-Ash'arī. According to this group, things did not have any essential properties of good or bad. All things were seen to be relative and relational predicates (*nisbiyya wa idāfiyya*): this will be called theistic subjectivsm.[55]

The central thesis of the Mu'tazilites was based on three arguments:

(1) detestability is an essential predicate

(2) detestability is something that *compotes mentis* (*'uqalā'*) know necessarily (*bi al-ḍarūra*)

(3) if *compotes mentis* agree upon something then it constitutes decisive proof (*ḥujja maqṭū'an bihā*) and is of necessity an indicant of [knowledge][56]

---

[55]Ibid.

[56]*Mu*, 1:57.

Al-Ghazālī rebutted the Mu'tazilite arguments by illustrating his point with 'hard' cases. In his reply to the allegation of detestability being an essential predicate, he used the act of killing as an illustration. While the killing of animals, or the judicial execution of a criminal were viewed as justified the killing of an innocent person was clearly seen as an offence. If killing was inherently detestable, its status should not vary in accordance with differing circumstances, since killing in its essence had a "single real nature" (*haqīqa wāḥida*).[57] The only explanation as to how the status of killing could change, would come from relating the act to certain benefits (*fawā'id*) and goals (*aghrāḍ*).

Responding to the question whether *compotes mentis* would axiomatically know the goodness and detestability of things, al-Ghazālī said that if it was as obvious as the Mu'tazilites alleged, then there would have been no dispute over such matters in the first instance. The fact that people disputed these facts was sufficient proof that knowledge about such ethical matters required inquiry. If and when *compotes mentis* did agree on issues, it did not necessarily follow that the agreement had been axiomatic. There were indeed instances when they did agree on matters which were not necessarily axiomatic for there may have been other reasons for such agreement. Al-Ghazālī said:

> On the whole, the approval (*istiḥsān*) of [acts of] good character (*makārim al-akhlāq*) and liberality (*ifādat al-ni'am*) is among the things no *compos mentis* would deny, except on the grounds of sheer obstinacy. We do not deny the widespread [recognition] of these judgements among humankind and their being generally thought praiseworthy. Yet the ultimate source [of these judgements] is either religious commitment to revelational stipulations (*tadayyun bi-sharā'i*) or [conformity to one's] objectives (*al-aghrāḍ*).[58]

Not content with his own explanations, al-Ghazālī animated his discussion with three psychological responses. Firstly, he argued, that one applied the term detestable to something when it contradicted one's objectives. In other words, goodness and

---

[57]Ibid.

[58]*Mu*, 1:58.

detestability were subjective experiences. His second illustrative argument was that human beings judged things on the basis of their preponderant experiences and accepted these as facts. In doing so, they tended to overlook the merits of other experiences and the possible benefits emanating from these. There may be exceptional cases, in which telling a lie in order to save the life of an innocent person may be considered to be a meritorious act. His final example supported his argument that one obeys and follows illusions of a Pavlovian type. Illusions (*awhām*) may dominate one's experience to such an extent that persons who had suffered snakebite would impulsively recoil whenever they saw a speckled rope, mistaking it for a snake. Sometimes a people's prejudice to a particular race or religion may result in them failing to appreciate the beauty or attractiveness of a man or woman. The detestability associated with a religion or ethnicity from the point of view of one's own religious or ethnic perspective, dominates one's experience of human interaction. In these observations al-Ghazālī made the point that human beings are so actuated by their subjective needs, egotism and false judgements, that they are essentially driven by their personal objectives. For human beings to attain felicity in life they need to be commanded by that which is free from personal objectives. Therefore he said:

> We deny the [objectives] with respect to God only in order to repudiate [the attribution of] objectives to Him. As for people's application of these phrases (*alfāẓ*) to what takes place among them (*yadūr baynahum*) there remain [other] objectives. But, objectives may be subtle or hidden and none may be aware of them except those who know the truth (*al-muhaqqiqūn*).[59]

Al-Ghazālī maintained that even things, which appear to be "axiomatic principles of assessment are in fact affective projections of self-serving calculations of interest."[60] He actually rejected any form of knowledge as fully reliable. This rejection excluded revelational knowledge, which he regarded as privileged knowledge. Acts, in themselves, were viewed as not being morally significant, as was knowledge of these acts. In fact, only

---

[59]Ibid.

[60]Reinhart, "Before Revelation," 311.

knowledge of what God had said about acts or things was seen as significant. There was nothing, he contended, in the ontic character of acts which could determine its goodness or detestability. Such a determinant (*ḥukm*), he believed, lay exclusively with God, and is thus transcendent. Al-Ghazālī could not discern any mental concept of what that determinant was, since he perceived an utter separation between the material and transcendent worlds.

Given the fact that, according to al-Ghażālī and the Ashʿarites, good and detestable could only be established by privileged knowledge of revelation (theistic subjectivism), the analysis of *ḥukm* and *khiṭāb* leads to the concept of human liability.

On the Discourse of Liability

Among the topics treated with great skill by al-Ghazālī was the notion of liability (*taklīf*). There were four component parts to the notion of liability: the determinant (*ḥukm*), the assessor (*ḥākim*), the one/thing who/which was being determined (*maḥkūm alayhi*) and the act which was being determined (*maḥkūm bihī*). Only the addresser, God, could oblige. In al-Ghazālī's words, only "the one to whom belongs creation and command," could impose liability.[61] The basis of liability for any subject, be he/she king, prophet, parent or spouse, stemmed from God's mandate to elicit obedience. There was dispute whether sanctions were a corollary of obligations. While al-Ghazālī believed that sanctions were the "real nature of obligation" (*haqīqat al-wujūb*), al-Bāqillānī did not believe that they were a requirement.[62] Al-Ghazālī favoured the threat of sanctions, especially sensate punishment, and considered it to be the drive behind all liability. We will

[61]*Mu*, 1:83.

[62]Ibid.

now consider the status of three interrelated issues which have a vital bearing on liability. They are reason, the actor and acts of liability.

Reason (*ʿaql*), in al-Ghazālī's opinion, was not a source for revealed determinants (*al-aḥkām al-sharʿiyya*), since reason was not part of the nomothetic discourse. The role that reason did play, was in signifying the absence of any determinant. Reason would be able to determine those issues in which revelation, or nomothetically transmitted authority was non-existent.[63] When reason was called a "source" (*aṣl*), this was done in a figurative manner in so far as it indicated the presence/absence of source material, said al-Ghazālī. If reason could judge the absence or presence of determinants, could it then judge whether something was good or detestable and so play a direct role in liability?

It was on this point - whether reason was a source for determining the goodness or detestability of a thing - that Ashʿarites and al-Ghazālī parted company with the Muʿtazilites. The same argument also applied to liability. So, for instance, when he referred to reason (*ʿaql*), as the "permitter" (*mubīḥ*), or the "obliger" (*mūjiban*), these terms should be considered in a figurative manner.[64] "For indeed, reason only discloses (*yuʿarrif*) the preference (*tarjīḥ*) and discloses the absence of preference."[65] Understanding its role in "being obligatory" (*wujūb*) indicated the role that reason played in preferring to do something rather than shunning it. All this is to be taken figuratively. The actual meaning of something being "permitted" (*mubāḥ*) in effect meant the disclosure that there is no preference. "Reason (*ʿaql*)," al-Ghazālī said in an aphorism, "is the discloser (*al-muʿarrif*) not the permitter (*mubīḥ*)."[66]

---

[63]*Mu*, 1:100.

[64]*Mu*, 1:63-64.

[65]*Mu*, 1: 63-64.

[66]*Mu*, 1: 63-64.

According to al-Ghazālī, liability was the product of a nomothetic discourse (*khiṭāb*) of an onerous kind (*bihi kulfa*).[67] Liability materialised when it generated active compliance (*imtithāl*) stemming from obedience (*tāʿa*).[68] Both obedience and compliance were not possible without an intention (*qaṣd*) to comply. The pre-condition for such an intention was to have knowledge of what was intended (*al-ʿilm bi al-maqṣūd*) to be a liability and also to comprehend the liability involved (*al-fahm li al-taklīf*).[69]

The locus of liability or the human actors (*mukallaf*) were required to exhibit two essential attributes: they had to be sane and be capable of comprehending a nomothetic discourse.[70] The classical Muslim philosophers described the human being as a "rational being," (*ḥayawān al-nāṭiq*) which literally meant the "uttering or speaking animal." The philosophers thus used the essential attribute of speech to define the human being and, by definition, also signified human intelligence. Al-Ghazālī continued in this tradition and predicated moral and legal liability on sanity and the comprehension of discourse. Liability was viewed as being coterminous with the very "humanity" (*al-insāniyya*) of the one made liable (*mukallaf*).[71] Humanity was fully realised only with the evidence of actual sanity and comprehension of discourse. Children and those who lacked sanity were not subject to moral liability. The capacity to understand the revealed discourse was imperative to the notion of liability.

Al-Ghazālī asserted that the commander and commanded did not have to be present for the effectiveness of liability. He was then confronted with the theological question: how could one hold the non-existent to be liable? For if the non-existent can be

---

[67]*Mu*, 1:88.

[68]Ibid.

[69]Ibid.

[70]Ibid.

[71]*Mu*, 1:84.

held liable, then by way of *argumentum a fortiori*, the insane, children and the amnesiac are technically more liable since they are existent. Liability in the state of non-existence, he explained, was impossible. What then did al-Ghazālī mean by the statement, 'the non-existent is commanded'?[72] He believed that the non-existent was commanded with liability pending the materialisation of its existence (*ʿalā taqdīr al-wujūd*).[73] In other words, all creation was potentially liable to mandatory obedience in a primordial sense pending their post-primordial existence. Once they came into existence, the actualisation of that obedience became a requirement. Or put another way, they were under a charge to perform the acts subsequent to coming into existence. This primordial charge could not have been called a discourse (*khiṭāb*). A charge only became a *khiṭāb* once it had an actual addressee to whom the command was directed.[74] It was also doubtful whether such a primordial charge could be called a command (*amr*). According to the correct view, said al-Ghazālī, it could be called a command. The example he presented to meet the theoretical intricacies of this problem, was that of people making out a testament in favour of their children. At the time of making the will some of the children may not have been born. Yet the testament had effect in the absence of the testator and even if some of the beneficiaries had not been born at the time of making the will. Similarly, Muslims are obliged to fulfill the commands of the Prophet even though he is no longer in existence. Generations of addressees of the prophetic message were not yet in existence when the Prophet announced his teachings, yet they are liable, said al-Ghazālī.

Al-Ghazālī argued this polemic of commanding the non-existent on the presumption that speech inheres in the mind or "inner speech" (*kalām al-nafs*). He said:

---

[72]*Mu*, 1:85.

[73]Ibid.

[74].Ibid.

> Liability (*taklīf*) is a special type of inner speech. Since there is a certain amount of obscurity in understanding the principle of inner speech, then it is inevitable that understanding its details and explanations would be even more obscure ... [75]

It is quite clear that al-Ghazālī rejected the nominalist view of language by frequently referring to the notion of "inner speech."

The acts of the one made liable should be voluntary, not coerced. For a voluntary act to turn into one of compliance, and then obedience, requires that the acting subject be charged with liability by the issuing of a command, and not by compulsion.[76] A threat does not turn an act into compulsion. What distinguished a coerced act from a voluntary one, was whether its motivation was in response to the call of the *sharīʿa*, or whether it was a response to any other extrinsic non-*sharīʿa* motivation. There are four conditions attached to an act of liability.

(1) It must conform to the sound rules of temporality. This condition excludes things which are primordial, everlasting, denatured genera or combined contradictions, from being acts which are subject to liability.[77]

(2) An act must not only be in existence but it must also be attainable.[78]

(3) It must be known to the commanded and be distinct from other commands.[79]

(4) It must be in existence so that willing its performance as obedience is valid.[80]

In enumerating these conditions, al-Ghazālī parted company with al-Ashʿarī by rejecting the doctrine of 'liability beyond one's capacity" (*taklīf ma la yutāq*). Those Ashʿarites who accepted the doctrine of liability beyond one's capacity believed that an act of liability did not have to be contingent on existence (*mumkin al-ḥudūth*).[81] If one accepts this

---

[75]*Mu*, 1:88.

[76]*Mu*, 1:91.

[77]*Mu*, 1:86.

[78]Ibid.

[79]Ibid.

[80]Ibid.

[81]Ibid.

doctrine several other things become permissible as a corollary, such as: commanding the doing of two opposing things; denaturing of genera; abolishing the primordial and inventing the existing.[82]

Al-Ashʿarī's position can be summarised by citing two of his main points. Firstly, a person who was sitting, in his view, could not stand for prayer because ability (*istiṭāʿa*) had to be realised coincidentally with the act, not prior to the act, even though one was commanded prior to the act. Secondly, he believed that temporal power (*al-qudrat al-ḥāditha*) had no effect in realising that which was possible.[83] Human acts were created by the power of God and were His invention. Therefore, every person, in al-Ashʿarī's view, was commanded by the actions of others. Al-Ghazālī cited three of al-Ashʿarī's arguments in support of "liability beyond one's capacity" and rebutted each one of them.

Rebuttal of al-Ashʿarī's Doctrine of "Liability Beyond One's Capacity"

In terms of the verse of the Qur'ān, 'Make us not bear burdens which we have no strength to bear (Q.2:286)," al-Ashʿarī argued that one did not need to pray for the removal of an impossible task since it would be removed by itself.[84] In other words, the task would not be realisable since the burden of liability would cause the destruction of the subject anyway. For example, the verses, 'Slay yourselves...or leave your habitations...(Q. 4:66)," would have been tantamount to imposing a liability beyond one's capacity.[85] Al-Ghazālī argued that liability required certainty of signification and an 'interpreted evident statement" (*al-ẓāhir al-mu'awwal*). The verse cited lacked the countervailing power of signification.

---

[82]Ibid

[83]Ibid.

[84]*Mu*, 1:87.

[85] Ibid.

Al-Ashʿarī argued that revelation charged the unbeliever, Abū Jahl, to believe in the messengership of the Prophet Muḥammad, while the same revelation also acknowledged that his arrogance and obstinacy would prevent him from faith. Al-Ghazālī in turned viewed this proposition by al-Ashʿarī as absurd (*muḥāll*) and rebutted it as a weak argument.[86] It was tantamount to a self-fulfilling prophecy, where Abū Jahl had to go through the motions of demonstrating that he did not attest to the Prophet's messengership when he had already been prevented from belief by Divine decree in the first place! Al-Ghazālī argued that Abū Jahl was charged with faith, since the evidence of his capacity for liability was tangible in that he could reason and demonstrated sanity. The fact that Abu Jahl *chose* to reject the imperatives of reason and sanity was the subject of a separate debate. Al-Ghazālī went on to explain that although God in his divine wisdom had foreknowledge that Abū Jahl would reject faith, it still did not lessen his liability to believe.

Al-Ghazālī's analogy in this case was that new knowledge was a *consequence* of what was already known, but it did not *change* what was already known. For example, if people were quite capable of performing an act and then abandoned it of their own accord, claiming that it was impossible to fulfill, then it did not mean that the performed act had ceased to be. It would be similar to the claim that knowledge turned into ignorance, when one was no longer in a position to attain it. Failure to acquire it does not mean that whatever knowledge was attained prior to it had ceased to exist or had been turned into ignorance. Similarly, though it was possible for God to bring about Resurrection immediately, He informed us that He would set it aside despite having the power to implement it immediately. Therefore, it is impossible for God to go against His own statement for it would be tantamount to turning His promise into a lie. The impossibility of God bringing about Resurrection immediately did not affect the event itself.

---

[86]Ibid.

Al-Ghazālī argued that "making one liable for the impossible" (*taklīf al-muḥāll*) was invalid. His Ashʿarite opponents argued that if the case was that *taklīf al-muḥāll* was impossible, then how could it be found to exist in four forms. It would be difficult to deny the existence of the liability of the impossible, in terms of

(1) linguistics;

(2) hermeneutics;

(3) the actual harm associated and emanating from the liability of the impossible, and

(4) the material contradiction of conventional wisdom which was evident.[87]

Linguistically, they said, an example was found in the Qur'ān where God, addressing human beings, said: "Be as apes despicable (Q. 2:65)."[88] Other examples were those of a master commanding his blind slave: "Look!" or saying to an invalid: "Walk!" From the point of view of meaning, it was not impossible for a master to demand that his slave be in two places at the same time to take care of his property or business in two cities. Furthermore, to argue that the liability of the impossible is not valid on the grounds that it could result in harm or that it contradicted conventional wisdom was no argument at all, asserted al-Ghazālī's opponents. Attributing such criteria to the Divine was absurd, since nothing detestable could emanate from Him and nor was the Divine compelled to act in terms of what is "best" (*al-aṣlaḥ*).

Al-Ghazālī conceded that all of the above arguments may not have successfully disproved the doctrine of the liability of the impossible. In his view the doctrine was soundly rejected on grounds of the human "incapacity" (*taʿjīz*) to fulfill such an impossible liability. The doctrine was not rejected on the grounds that it was impossible for human

[87] Ibid.

[88] Ibid.

beings to "demand" or "request" (*ṭalab*) such a liability.[89] Nothing prevented a human being from making imaginative demands which cannot be realised in actuality. So for instance, there was a difference between instructing a normal and healthy person with the performative to "enter the house" and asking the same person to "climb to the heavens." The same applied to asking someone to change a tree into a horse.[90]

Al-Ghazālī explained the underlying philosophy of this argument by suggesting that the definition of liability (*taklīf*) was "a requisition of that which is onerous."[91] This meant that before a person could be charged with a liability it would be necessary for the charge to be understood. So while the object of the Arabic word *"taḥarrak!"*, meaning "Move!" is quite clearly understood, the object of the meaningless utterance *"tamarrak!"* has no sense at all and cannot enjoin any liability. Let us assume, for the purpose of argument, that this word does have a meaning in some other language, even then it still would not evoke liability. A prerequisite of liability is that the addressee should understand the directive. It is not enough that only the addresser or commander understand the phrase. Indeed, the purpose of any address of this kind is to make it understood, in order to allow the addressee to conceptualise (*taṣawwur*) the element of obedience it demands. In the final instance "liability requires obedience."[92] Al-Ghazālī went further to argue that even a notion such as obedience or compliance had to be "conceivable" (*mutaṣawwar*) in the mind before it could materialise in reality.[93] Any requisition (*ṭalab*) must be concretely objectifiable and intelligible before liability could be enforced and therefore the dictum, "that which has no model in the psyche, has no image in reality" (*ma lā mithāl lahu fī al-*

[89]Ibid.

[90]*Mu*, 1:88.

[91]*Mu*, 1:87.

[92]*Mu*, 1:88.

[93]Ibid.

nafs lā mithāl lahu fī al-wujūd) was so crucial in the charging of liability.[94] For instance, the notion of originating the primordial (*iḥdāth al-qadīm*) is not conceivable in the mind.[95] Therefore, the demand (*ṭalab*) for the "origination of the primordial" is not possible since there is no mental frame of reference for such a notion.

Al-Ghazālī was fully aware that the notion of liability was extremely complex and many of his responses to the doctrine of "liability beyond one's capacity" begged the question. His response was that the verse in the "Make us not bear burdens which we have no strength to bear (Q. 2:286)" opposed that doctrine. Knowing full well that he had not really answered the issue at hand, al-Ghazālī attributed the obscurity of his reply was due to the fact that liability (*taklīf*) was a special type of speech inherent in the mind. Given the difficulty of understanding "inner speech" it is even more difficult to grasp the special type of speech which affects liability, he concluded.[96]

It is interesting to note how al-Ghazālī reverted to semantics, and took refuge in notions of "human capacity" and "ability" instead of divine omnipotence. In opposing the doctrine of liability beyond one's capacity, al-Ghazālī had turned in favour of human capacity. According to al-Ghazālī, making one liable for that which is beyond one's capacity (*taklīf mā lā yuṭāq*) was not permissible. Earlier, it was noted that in matters regarding the goodness and detestability of things, he would not allow the argument of human capacity to make judgements of good and bad to trump divine omnipotence. Effectively, al-Ghazālī made a damning statement in rebuttal of his theological schoolmen, especially Abū al-Ḥasan al-Ashʿarī. Al-Ghazālī said:

---

[94]Ibid.

[95]Ibid.

[96]Ibid.

> Whoever rationally permits the liability of that which is beyond one's capacity, is [actually] negating [liability] by revelation (*shar'an*) on the grounds of God's word: Allah does not make a soul liable for greater that what it can bear.[97]

Conclusion

The determinant (*ḥukm*), nomothetic discourse (*khiṭāb*), the juridical ethics of the goodness and detestability (*tahsin wa taqbih*) of things, and liability (*taklif*), are discursive formations mediated by language and rhetoric.

Al-Ghazālī did not adopt a nominalist approach to language. Language for him signified other things and pointed in the direction of metaphysics. This was illustrated in his understanding of the determinant (*ḥukm*) as being tantamount to the nomothetic discourse (*khiṭāb*). While the *ḥukm* was the signified of the *khiṭāb*, the *khiṭāb* was not the signifier, but merely served as its pretext. The real signifier is the "inner speech" (*kalām al-nafs*). This understanding of the primordial determinant, the very *raison d'etre* of Muslim jurisprudence, implies the tentativeness of every determination made. It makes it possible for the human agent to interact and 'dia-logue' with the revelation in a creative and dynamic manner.

The overall picture that emerges is that in the debate on *ḥukm* and *khiṭāb* al-Ghazālī attempted epistemological closure by resorting to the architectonic religious discipline of theology in order to establish the sovereignty of the divine speech and primordial determinant. Despite his attempt to establish epistemological order the notion of "inner speech" opened up the domain of the subjective and speculative, causing instability. Language continuously manifests itself as the most subversive element in al-Ghazālī's legal theory.

---

[97] *Mu*, 1:89.

In the debate on juristic ethics al-Ghazālī established epistemological stability by anchoring ethics to the will of the sovereign. Here he allowed divine omnipotence to trump human capacity to make ethical decisions. However, in the discussion of liability, human freedom was given greater scope. He seemed to veer extremely close to a voluntarist position on liability and gave human freedom greater discursive space, by rebutting al-Ashʿarī's deterministic arguments on liability and firmly entrenching human choice and human capacity. He opposed the doctrine of "liability beyond one's capacity" which was his most eloquent statement in favour of human capacity. Here too, he resorted to a verse, the linguistic sign of the *khiṭāb*, to shore up his rational and realistic juristic forays.

Al-Ghazālī's legal philosophy continue to show consistent signs of binary opposites which created a tension between stability and instability, order and disorder, determinism and free will.

Chapter 7

The Jurist Working in the Public Interest

Introduction

In this chapter I will investigate the practical application and consequences of al-Ghazālī's contribution to Islamic legal philosophy . In the previous chapter I explained that, at a theoretical level, there was a creative tension between the determinant (*ḥukm*) and nomothetic discourse (*khitab*) on the one hand, and juristic ethics (*taḥsīn wa al-taqbīh*) and liability (*taklīf*) on the other. I will now examine the role of the master-jurist (*mujtahid*) and the exercise of independent and creative juristic discretion (*ijtihād*) in search of the determinant in the service of public interest. By looking at these aspects from al-Ghazālī's viewpoint, we will be able to determine to what extent he saw himself as being restrained by the theoretical limitations imposed on him by the juristic tradition, and to what measure he was prepared to engage in subjective interpretation of legal theory. I will first explore the concept of independent juristic discretion (*ijtihād*) and public interest (*maṣlaḥa*) and then examine the illustrations provided by a study of al-Ghazālī's *al-Mustaṣfā*.

Independent Juristic Discretion (*Ijtihād*)

Ijtihād is defined as 'the effort expended by a jurist (*mujtahid*) according to his [her][1] capacity in search of knowledge pertaining to the determinants of the revelation."[2] The antithesis of juristic discretion (*ijtihād*) is to follow the opinions of established juristic

---

[1]Interestingly, al-Ghazālī illustrates one of his cases of a male master-jurist (*mujtahid*) marrying a female *mujtahid(ah)*, *Mu*, 2:368.

[2]*Mu*, 2:350.

authorities (*taqlīd*), which according to al-Ghazālī was 'to accept an opinion without a proof-argument" (*ḥujja*).[3]

Al-Ghazālī acknowledged that scholars could, theoretically and realistically, reach the status of supreme master-jurist (*mujtahid muṭlāq*), whose proficiency in law allowed them the liberty to develop a legal theory and methodology independently. This meant that a master-jurist of the highest order did not necessarily follow a particular law school (*madhhab*) but could, in fact, personally become the founder of a law school. Master-jurists, according to al-Ghazālī, would have to had to attain two essential qualifications. Firstly, they ought to have a comprehensive grasp of the sources of the revealed law (*shar*ᶜ). Such a person would have been capable of eliciting probable knowledge (*ẓann*) from these sources by discursive means (*naẓar*) and would have been able to make a learned and informed evaluation thereof. Secondly, the probity (*adāla*) of the jurist would have had to be beyond reproach, a status which could have been achieved by abstaining from sinful deeds. While probity itself was not, according to al-Ghazālī, a precondition for the soundness of *ijtihād*, the credibility of jurists was, in his opinion, was a crucial factor for the public reception of their juridical opinions (*fatāwā*).[4]

Al-Ghazālī said that by examining the juridical responsa (*fatāwā*) issued by a jurist one would be able to judge whether the person had mastered the sources of law or not. A proficient jurist (*mujtahid*) would have been able to demonstrate expertise in eight disciplines (*ᶜulūm*). Four of these disciplines, in al-Ghazālī's words, dealt with 'how to harvest the fruits" and knowledge of the "productive sources" of law.[5] The four disciplines on method were:

---

[3]Mu, 2:387.

[4]Mu, 2:350.

[5]Ibid.

(1) The discipline of exegesis of the Book, meaning the Qur'ān as the main source of revealed knowledge. Al-Shāfiʿī for instance required a master-jurist (*mujtahid*) to commit the Qur'ān to memory, or at the very least those verses dealing with determinants (*aḥkām*). Al-Ghazālī believed that the requirement of memorisation could be waived. All that was required from the master-jurist is to demonstrate familiarity with the some 500 verses related to law and be able to access them whenever required.[6]

(2) *Ḥadīth* studies: a master-jurist should have comprehensive knowledge of the discipline of *ḥadīth* studies, especially those materials related to juridical matters. Again al-Ghazali made the concession that the memorisation of *ḥadīth* materials was not a *sine qua non*.

It would have been sufficient for the jurist to have, for reference purposes, an authorised collection of *ḥadīth* materials.[7]

(3) The third discipline dealt with precedent. Again memorisation was waived. It was sufficient if the jurist demonstrated knowledge of previous instances of juristic consensus. This was to ensure that the jurist was aware of case precedents so that a *fatwā* is not issued on a topic where a decision already existed.[8]

(4) Finally, al-Ghazālī proposed the fourth discipline called "reason" (*ʿaql*). Reason was the prime informant of the jurist on matters of original innocence from liability. It was also reason which declared, when there was no prescription from the law and hence no liability, and that original innocence applied in such an instance.[9]

The second set of disciplines which served as the "means of harvesting" (*ṭuruq al-istithmār*) had an auxiliary function.[10] They were four disciplines.

---

[6]Ibid.

[7]*Mu*, 2:351.

[8]Ibid.

[9]Ibid.

[10]Ibid.

(1) Logic, which was defined as the discipline of knowing how proofs and indicants were produced and how they functioned, and under which conditions and arguments they would have applied.[11] The master-jurist would have had to know that the valid arguments (*adilla*) in law are of three kinds:

(a) rational (*ʿaqliyya*) arguments which were self evident

(b) legal (*sharʿiyya*) arguments prescribed by the revelation

(c) conventional (*waḍʿiyya*) arguments, which relied on linguistic usage.

Al-Ghazālī placed special emphasis on the discipline of logic since it was vital in dealing with the four sources of the law.[12] Nothing short of the introduction to logic as outlined at the beginning of *al-Mustaṣfā* would have satisfied al-Ghazālī's minimum qualification of proficiency in this discipline. In the strongest motivation for the need for logic, he said:

> ... for surely whosoever does not know the conditions for arguments would be unable to know the essential reality (*haqīqa*) of a determinant (*ḥukm*), nor grasp the essential reality of the revealed law (*sharʿ*), and [for that matter] not know the presumption (*muqaddima*) of the Lawgiver (*Shāriʿ*), and would not have known who the Lawgiver had sent ... [13]

Under the rubric of the discipline of logic, al-Ghazālī said it was necessary that a master-jurist have an elementary knowledge of theology. The pretext for this precondition was that the jurisconsult (*muftī*) ought to be a Muslim and therefore by implication should know something about dogma.[14] However, he conceded that the master-jurist need not have been an expert in the arguments, methods and rhetoric of theology. The Companions of the Prophet and the Successors, al-Ghazālī said, had not mastered the discipline of theology (*kalām*). After ostensibly making half-hearted concessions on the requirement of *kalām*, al-Ghazālī could not suppress his own predilection for the discipline by stressing the importance of theology in an indirect manner. He asked, for instance, whether it was a

---

[11]Ibid.

[12]*Mu*, 2:351-2.

[13]*Mu*, 2:352.

[14]Ibid.

pre-condition for a master-jurists to avoid following authority (*taqlīd*), and instead arrive at their theological conclusions independently. While he answered that it was not a precondition for a master-jurist to be an independent expert in *kalām* matters, al-Ghazālī's reply deserves attention. To have been an authority in *kalām*, he said, was

> ... not a condition in itself, but it stemmed from the imperative of the status of *ijtihād*. For surely, the [aspirant] master-jurist (*mujtahid*) cannot claim to have attained the status of independent juristic discretion and still not have heard the [theological] arguments about the creation of the world, the attributes of the Creator, the sending of messengers and the inimitability of the Qur'ān? For indeed, all these [arguments] are found in the Book of God. It is the attainment of true knowledge that allows its bearer to go beyond following authority (*taqlīd*), even though such a person may never have practised the art of *kalām*. This [knowledge of *kalām*] is among the concomitant (*lawāzim*) requirements of the status of being an independent jurist.[15]

The detailed and extensive attention al-Ghazālī gave to this point bears testimony to his passion for theology. While he admitted that there was no formal requirement for a master-jurist (*mujtahid*) to display excellence in *kalām*, the work of the jurists should have, invariably, made them proficient in the discipline of theology.

Even lay persons were obliged to follow their personal convictions in theology, but not in the law! Towards the end of the discussion on logic, al-Ghazālī said:

> In so far that one who follows authority can conceptually apprehend the verification of the Messenger and the sources of belief, it will be permissible for such a person to engage in individual discretion in secondary matters [of theology].[16]

---

[15]Ibid.

[16]Ibid., al-Ghazālī says: *"...ḥatta law taṣawwara muqallidun maḥḍūn fī taṣdīq al-rasūl wa uṣūl al-imān la jāza lahu al-ijtihād fī al-furū'."*

This view emerged from his understanding that any reasonable amount of knowledge rendered imitation of authority (*taqlīd*) invalid. "Following authority," he said, "is not a path to either knowledge of principles, or secondary issues."[17]

(2) The second auxiliary discipline required by a master-jurist was a working knowledge of the Arabic language and grammar. A master-jurist would have to be, at least, capable of "comprehending the discourse of the Arabs and their use of language."[18] Again, al-Ghazālī conceded that the master-jurist needed not have become an expert in grammar to the level of the master grammarians and philologists like al-Khalīl b. Aḥmad al-Farāhidī (d. 175/791) and al-Mubarrad (d. 286/900).[19] The yardstick for language-proficiency would have been a clear indication that the jurist could grasp the "range of discourses and the meanings of the intentions contained therein."[20]

(3) The master-jurist, according to al-Ghazālī, would have needed specialised knowledge of the instances of abrogation in the Qur'ān and the Sunna. While the topic of abrogation, a sub-section of the discipline of Qur'ān and *ḥadīth* proper, would have been included in the disciplines proper, al-Ghazālī considered it crucial for separate listing. The topic of abrogation is vital in so far as a jurist could make a cardinal error of judgement in considering portions of the source-texts as being valid, whereas these may have been abrogated and, therefore, no longer part of the law. The jurist did not need to know the abrogated materials by heart, but would have had to ensure that his judgements were not invalidated by using abrogated source materials.

---

[17]*Mu*, 2:387.

[18]*Mu*, 2:352.

[19]Since there is uncertainty over al-Khalīl's date of death, other dates given are: 170/786 and 160/776.

[20]*Mu*, 2:352.

(4) Finally, al-Ghazālī dealt with the topic of reporters of traditions (*aḥādīth*), which was an ancillary topic to *ḥadīth* studies. He singled out this sub-section on reporters for special mention. Proficiency in this sub-section would enable the jurist to distinguish sound and acceptable reports from faulty and rejected ones. He conceded, yet again, that the jurist could accept those *ḥadīth* reports which were generally accepted by the community of believers without having to investigate the chain of transmission (*isnād*), even though some scholars may oppose their validity.[21] A master-jurist needed to be satisfied that the probity of the *ḥadīth* reporters was sound. If the reporter was well known then it was indicative that people generally accepted their probity and credibility. It would have been be unreasonable to expect jurists to participate in exhaustive investigations on reporters in *ḥadīth* transmissions. The master-jurist would only have needed to satisfy him or herself as to the soundness of the verification and authorisation process (*al-jarḥ wa al-taʿdīl*) undertaken by a recognised expert in the field of *ḥadīth* before accepting the *ḥadīth* materials on the authority and verification process of the expert.[22]

Al-Ghazālī felt that these eight disciplines - the qualifiying criteria to become a supreme master-jurist (*mujtahid mutlaq*) - were frequently ignored. If jurists could not fulfill all the above requirements then they could opt for a lesser status in the ranks of a master-jurist, by becoming specialists in one or a few selective areas of the law only. Such a person would then be a master-jurist in a specific area or specific issues. Al-Ghazālī adds, that a master-jurist (*mujtahid*) could also not have been required to answer every question posed. The Companions of the Prophet and later personalities like the Madīnan jurist, Mālik b. Anas (d. 179/795) as well as al-Shāfiʿī, did not hesitate to declare their

[21] Ibid.

[22] *Mu*, 2:353.

ignorance on certain issues. The golden rule, according to al-Ghazālī, was that the jurist would have to have an

> ... insight (*baṣīra*) in that in which one gives a ruling (*yufti*). So he should only give rulings in terms of what he knows and should ensure that he knows what he [claims to] know. And, he should be able to distinguish between that which he does not know and what he knows. He should stop at that which he does not know and rule in terms of what he knows... [23]

In discussing the qualifications of the supreme master-jurist (*mujtahid-muṭlaq*), one observes that al-Ghazālī was keen to ensure the perpetuation of an open juristic tradition by lessening the burden of qualification for the attainment of the status of supreme master jurist. Al-Ghazālī's ideal jurist was the one who was also an expert in theology, but one may have to attribute this preference to his personal obsession with theology. There are no indications, in this work of al-Ghazālī, that the "doors of juristic discretion (*ijtihād*)" had been closed. If this had been the case, he would, at least, have made the burden of qualification so difficult to attain, that juristic discretion would have been indirectly limited. On the contrary, he debated the theses on the validity of juristic discretion, whether there could only be one correct juristic judgement (infallibilist position), or many correct rulings (fallibilist position).

The Validity of Juristic Discretion (*Ijtihād*): One or Many?

Al-Ghazālī restricted his discussions, mainly, to the scope of juristic discretion (*ijtihād*) itself and the epistemological status and validity of discretionary judgement. "Any legal determinant not supported by a decisive indicant falls in the realm of juristic discretion" (*wa al-mujtahad fīhi kullu ḥukmin shar'īyin laysa fīhi dalīlun qat'ī*), said al-

[23] *Mu*, 2:354.

Ghazālī.[24] In other words all matters that fell within the epistemological category of probable (*ẓannī*) was subject to juristic discretion and interpretation. Excluded from the realm of juristic discretion (*ijtihād*) were those matters that were categoric and decisive (*qaṭ'iyyāt*) in terms of epistemology and signified epistemological certainty. They were theological matters (*kalamiyya*), foundational matters (*uṣūliyya*) and some matters of positive law (*fiqhiyya*).[25] In these matters there could only be one correct answer and the person in error would be considered to be sinful.

Theological matters included rational (*'aqliyāt*) and theological (*masā'il al-kalām*) issues of a categoric and decisive type such as fundamental questions of dogma.[26] Under foundational matters (*uṣūliyya*), al-Ghazālī dealt with issues such as the proof-value (*ḥujja*) and authority of the various sources of the law which were considered to be decisive and categoric. These included the categoric proof-value of juristic consensus, analogy and solitary reports. Those decisive and categoric issues of positive law, which al-Ghazālī called the "sure issues of the law" (*jalīyāt al-shar'*) included the mandatoriness of five-times daily prayers, fasting, the prohibition of theft, fornication and drinking of wine among others.[27] Rejection of those things that are known to be true by necessity (*bi al-ḍarūra*) would be considered to be tantamount to infidelity (*kufr*).[28] All matters, other than these, were in the realm of the probable (*ẓann*).

There were two main schools of thought on the determination of matters of juristic discretion. The infallibilist (*taṣwīb*) position, according to al-Ghazālī, stated that every jurist could be "correct" in arriving at a decision in cases which were epistemologically

[24]Ibid.

[25]*Mu*, 2:357-8.

[26]*Mu*, 2:354; 2:357.

[27]*Mu*, 2:354.

[28]*Mu*, 2:358.

probable (*kullu mujtahidin fī al-ẓanniyāt muṣīb*) - this was also the majority position.[29] The fallibilist (*takhṭi'a*) position, on the other hand, maintained that there was only one correct answer.[30]

Each of these positions centred around a common theological assumption or question: did God have a specific determinant (*ḥukm mu'ayyan*) which should be the target of a jurist's effort in cases where there was no textual legislation (*naṣṣ*)?[31] Al-Ghazālī's view - where he claimed to be following the lead of al-Bāqillānī - was that God did not have a specific determinant for non-legislated (*ghayr manṣūṣ*) cases. In fact, the determinant (*ḥukm*) had to be the dominant probability (*ghalabat al-ẓann*) in the mind of the jurist.[32] In fact, he said, the determinant followed the probable. A slightly different infallibilist view held that God did have a specific determinant to be sought after, and every search had to have an objective (*maṭlūb*).[33] The only difference between this view and the previous one is that the jurist is not compelled to find the correct answer. Therefore, even if he is wrong in identifying the determinant, he will still have "hit" the correct answer in a manner of speaking, since he had fulfilled the *obligation* of searching for the specific determinant.

The fallibilists (*takhṭi'a*) believed that there was only one correct answer in non-legislated cases and events.[34] They also believed that God had provided a specified determinant (*ḥukm mu'ayyan*) worthy of juristic search. The fallibilists were, however, divided into two camps on the question of the indicant (*dalīl*) which guided the jurist to

---

[29]*Mu*, 2:358-9; 2:363.

[30]*Mu*, 2:363.

[31]Ibid.

[32]Ibid.

[33]Ibid.

[34]Ibid.

the specified determinant. One group maintained that there was no indicant, and that the *search* for the determinant was equivalent to accidentally stumbling across a buried treasure. The one who discovered the treasure got two rewards; the one who failed to find it, got one reward in terms of the famous prophetic dictum that a jurist that arrives at a correct decision gets two rewards and the one who errs gets one. The group who held that there was an indicant, disagreed on whether the guiding indicant was categoric (*qaṭ'ī*) or probable (*ẓannī*).[35] Those who claimed that the guiding indicant (*dalīl*) was categoric said that the failure of the errant jurist was excused because of the subtle and concealed character of the indicant. The Murji'ite theologian, Bishr al-Marīsī (d. 218/833), in al-Ghazālī's opinion, went to extremes in saying that the errant jurist had sinned for violating a categoric determinant.[36]

Those among the fallibilists who held the view that the indicant was probable, also adopted differing stances on the subject. One view was that the jurist was decisively commanded to arrive at the "correct" guiding indicant (*dalīl*) which would lead to the correct determinant. The other view was that the command was only to *search* for the indicant. In other words, jurists were not compelled (*lam yukallaf*) to identify the indicant correctly, given its concealed character, and therefore they were excused and rewarded for the effort expended in the search. Those who believed that the command was only to *search* for the guiding indicant said there was no reward for arriving at the wrong answer, but at the same time the expected sin was also diminished by way of concession.[37]

Al-Ghazālī's concluding view on the debate between the infallibilists and the fallibilists on the validity of juristic discretion was the following:

---

[35]Ibid.

[36]*Mu*, 2:363-4.

[37]*Mu*, 2:364.

> Our approved view with which we will categorically fault any opponent, is that in probable issues every jurist is correct and that God the Supreme had not specified any determinant in these [issues].[38]

Al-Ghazālī was adamant that juristic discretion was *only* permissible in cases where there was no decisive ruling or text. He, nevertheless, opened up a vast area in jurisprudence for diversity and multiplicity of opinion. The diversity of juristic paths and methods may have stemmed, partly from abstract theological assumptions, but was located, to a large extent, in language.

Between Indicants and Signs: Language and the Relativity of Juristic Discretion

Al-Ghazālī made a vital point in his discussion of juristic discretion which is frequently overlooked. He presented it in terms of the epistemological status of probable indicants (*al-adilla al-ẓanniyya*), but it was perhaps more a question of languaging. He stated that probable indicants were not really epistemological, namely logical indicants, but actually linguistic signs (*amārāt*).[39] While everything could be viewed as a sign in postmodern discourse, in the context of al-Ghazālī, the distinction between epistemological indicants and linguistic signs was significant. When probable indicants were designated as indicants (*adilla*), said al-Ghazālī, it was in a figurative (*majāz*) manner.[40] Signs (*amarāt*) in themselves did not have the properties of signification, but acquired signification through their associative relations (*iḍāfāt*). Probability was an extremely subjective category, said al-Ghazālī:

---

[38]Ibid.

[39]*Mu*, 2:365.

[40]*Mu*, 2:376.

> A probable [sign] is tantamount to the inclination of the self to a thing, or preferring certain interests, like approving pictures. If one's disposition approves of a picture, one will incline towards it and describe it as beautiful. That very thing may disgust the disposition of another, who will describe it as detestable.[41]

Al-Ghazālī illustrated this point by saying that a thing which was probable for Zayd may not have been so for ʿAmr. Moreover, the same thing may have been probable for Zayd in one instance, and not so in another. A concrete illustration of how signs had varying influences on people was the difference of opinion between Abū Bakr, the first caliph and the senior Companion ʿUmar b. al-Khaṭṭāb, on the question of the distribution of the military stipend (*ʿata'*) to the soldiers. Abū Bakr's opinion was that all soldiers should receive an equal stipend while ʿUmar favoured a differentiated stipend based on merit. Neither of them could convince the other. The reason for this, al-Ghazālī maintained, had to do with their circumstances (*ḥāl*). Abū Bakr was absorbed in divine (*ta'alluh*) and in afterworldly pursuits (*tajrīd al-naẓar fī al-ākhira*).[42] ʿUmar's disposition was towards politics (*al-iltifāt ila al-siyāsa*) and guarding the public interest (*wa riʿāyatu maṣāliḥi al-khalq*).[43] While each of them comprehended the other's argument, "the differences in character, circumstances, and experiences inevitably produced differences of opinions (*ẓunūn*)."[44]

This insight of al-Ghazālī's, within the context of juristic discretion, illuminated the relativity of the permissible (*ḥalāl*) and the prohibited (*ḥarām*) in matters for which there were no decisive rulings. A thing which could be permissible in one set of circumstances could be prohibited under different conditions. Superficially, this may seem to be a contradiction, because of a flaw in analysing the distinction between categoric and

---

[41] Ibid.

[42] *Mu*, 2:365.

[43] Ibid.

[44] Ibid.

probable propositions. Contradictions were, however, characteristic of probable propositions but were disallowed in categoric propositions.[45]

Confusion stems from an understanding of the signification of a determinant (*ḥukm*). Determinants (*aḥkām*) are attributes of actions or signifiers of certain acts (*waṣf al-afʿāl*) undertaken by those made responsible (*mukallafūn*). Permissible and prohibited on the other hand are attributes of acts and not attributes of substances (*waṣf al-aʿyān*). The determinant regarding a particular act or substance is determined in terms of relativity and associations. The confusion arises when the status of an *action*, deemed permissible or prohibited, is figuratively transferred to the *substance*. For instance in terms of legal theory, the *act* of eating pork is prohibited. But figuratively one says 'pork is prohibited," where the status of the *act* (eating=prohibited) is transferred to the substance (pork).

From the above one can summarise, that according to al-Ghazālī, juristic discretion (*ijtihād*) was allowed in the realm of the probable - the realm of signs - therefore the bulk of juristic activity is exposed to the free-floating instability of linguistic signs. Juristic syllogism (*qiyās*) became one of the most approved forms regulating the language of the law. In the more specialised, but controversial forms of juristic discretion, such as public interest (*maṣlaḥā*) and preference (*istiḥsān*), attempts were made to further regulate the linguistic instability.

The differences between the infallibilists and fallibilists were rooted in their theological presuppositions. The infallibilists' point of departure did not rule out the fact that, theoretically, there may have been only one correct answer. However, they argued that the jurist's obligation - a theological issue - was *only* to *search* and expend effort in pursuit of the correct answer, since there was no obligation to find it. Here al-Ghazālī's

[45]Ibid.

position was consistent with the mainstream Ashʿarite position since the limitations of human capacity featured prominently in Ashʿarite theology. The fallibilist position, on the other hand, was based on the theological assumption, that not only did God provide a specified determinant in probable propositions, but that God also held humans responsible for *finding* the correct determinant. The Muʿtazilites valorised this view and gave human capacity a far greater esteem than the Ashʿarites ever did. The theistic relativity of the Ashʿarites and the rationalist objectivity of the Muʿtazilites, clearly impacted on the different genres of legal theory and our appreciation of their respective applications in positive law. However, it is important to note that this relativity-objectivity debate was not only based on abstract theological assumptions, but also on language usage.

Legal theory was primarily developed in order to regulate the free-floating signs (*amārāt*) which were often confused as being indicants (*adilla*). The probable indicants (*adilla ẓanniyya*) were signs and formed the major part of the juristic enterprise. The language debate proved to be the most important component in legal theory, and on a par with theological debate as evidenced in the work of al-Ghazālī. The observation about the centrality of language in legal theory was also underlined by the celebrated jurist and philosopher, Ibn Rushd (d. 595/1198).[46]

The Doctrine of Public Interest (*Maṣlaḥa*)[47]

Although the concept of *maṣlaḥa per se* only surfaced in the work of al-Ghazālī's teacher, al-Juwaynī (d. 478/1058) and then in *al-Mustaṣfā*, the notion of public interest can be traced to the judicial decrees of the second caliph, ʿUmar ibn al-Khaṭṭāb.[48] ʿUmar,

[46]Abū al-Walīd Muḥammad Ibn Rushd al-Ḥafīd, *al-Ḍarūrī fī Uṣūl al-Fiqh aw Mukhtaṣar al-Mustaṣfā*, ed. Jamāl al-Dīn al-ʿAlawī, (Beirut: Dār al-Gharb al-Islāmī, 1994), 36.

[47]Literally *maṣlaḥa* means interest, benefit. But in the technical use of the term it is translated as a public interest(s) (*al-maṣāliḥ al-ʿāmma*), given its role in public affairs jurisprudence.

[48]Madjid Khadduri, *"Maṣlaḥa,"* in Encyclopaedia of Islam, 2d ed.

for instance, argued that public welfare (*al-khayr and naf*ᶜ) considerations demand that the Sawād land in southern ᶜIrāq could not be distributed among the warriors, but that these should remain state land. Up to that time the practice of the Prophet had been to distribute the land among the warriors in military action (*jihād*). ᶜUmar's reasoning was that if the land was divided among the warriors "what would be the position of the believers as a whole and their descendants?" Placing the land under state control, ᶜUmar argued, would bring about greater welfare and utility for the believers (*al-khayr li-jamīᶜ al-muslimīn....wa ᶜumūm al-naf li-jamāᶜtihim*).[49] Although the word *maṣlaḥa* (benefit, interest) was not used at the time, other terms such as *khayr* (public welfare) and *ᶜumūm al-naf* (public utility), provided the approximate sense.[50]

The Madīnan jurist, Mālik b. Anas developed the notion of *istiṣlāḥ*, through which *maṣlaḥa* is considered a basis for legal decisions. Although no evidence can be found in Malik's writings, his disciples cited cases where *maṣlaḥa* was used as a concept of law.[51] Says Khadduri:

> As a method of legal reasoning, however, *istiṣlāḥ* was developed later and used by jurists who claimed that Malik was the first to initiate the use of it. No clear evidence has yet come to light indicating that Mālik had used *maṣlaḥa* as a concept.[52]

Later Māliki jurists, like Abū Ishāq al-Shāṭibī (d. 790/1388) pointed out that there had been a theological debate about whether the determinants of God (*aḥkām allāh*) were subject to rational analysis (*taᶜlīl*).[53] He raised this point in the context of whether revealed dispensations (*sharāᶜi*) were designed to meet the public welfare of people

---

[49]Ibid.

[50]al-Shāṭibī, *al-Iᶜtiṣām*, 2:115 for ᶜUmar's statement of *khayr*.

[51]Khadduri, "Maslaha."

[52]Ibid.

[53]al-Shāṭibī, *al-Muwāfaqāt*, commentary by al-Shaykh ᶜAbd Allāh Darāz, ed. Muḥammad ᶜAbd Allāh Darāz, (Beirut: Dār al-Maᶜrifa, n.d.), 2:6.

(*maṣāliḥ al-ʿibād*) or not. It was the Muʿtazilites, he said, who held that the determinants of God were subject to rational analysis in consideration of human welfare (*bi riʿayat maṣāliḥ al-ʿibād*).[54] Al-Shāṭibī acknowledged the debt of Islamic jurisprudence to the Muʿtazilites when he added that the 'moderns (*muta'akkhirūn*) among the jurists adopted that [Muʿtazilite] position," of subjecting the determinants to rational analysis.[55]

This explicit acknowledgement, made centuries after the death of al-Ghazālī, was significant in that it recognised that the concept of *maṣlaḥa* partly emerged out of the ashes of the theological polemics between the traditionalists and their rationalist opponents. This also possibly accounted for the continuous indecision regarding the status of *maṣlaḥa* in Muslim jurisprudence.[56] While most of the traditionalist schools held tenaciously to the fidelity of the revealed word and law above reason, *maṣlaḥa* was acceptable to more moderate traditionalist positions within the Mālikī, Shāfiʿī and Ḥanafī schools who accommodated the role of discursive reason. The effect of this accommodation was that in both legal theory (*uṣūl*) and positive law (*fiqh*), another path was opened for the horizontal insertion of reason into the juridical discourse via the concept of *maṣlaḥa*. Given the intellectual discord at the time, the inclusion of *maṣlaḥa* may have been spurned among the more traditionalist elements within the law schools. Therefore, it is not at all surprising to observe al-Ghazālī's cautious approach to this topic.

---

[54]Ibid.

[55]Ibid.

[56]Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1991), 277-281; also see ʿAbdallah M. al-Ḥusayn al-ʿĀmirī, "At-Tūfī's Refutation of Traditional Muslim Juristic Sources of the Law and his View on the Priority of Regard for Human Welfare as the Highest Source or Principle" (Ph.D. diss., University of California, Santa Barbara, 1982; Iḥsān Abdul-Wājid Bagby, "Utility in Classical Islamic Law: The Concept of *Maṣlaḥah* in '*Uṣūl al-Fiqh*' " (Ph.D. diss., University of Michigan, 1986).

al-Ghazālī on *Maṣlaḥa*

Istiṣlāḥ, seeking to make rulings on the basis of *maṣlaḥa*, was in al-Ghazālī's view among the "imaginary sources" (*al-uṣūl al-mawhūma*) of law. In other words, subjective and therefore controversial.[57] According to al-Ghazālī, jurists resorted to the doctrine of *maṣlaḥa* only when none of the approved sources provided relief.[58] Technically, he did not consider *maṣlaḥa* as a fifth source of the *sharī'a*. In fact *maṣlaḥa*, for him, had to be linked to the intentions (*maqāṣid*) of the law (*shar'*) which are in turn derived from the Qur'ān, Sunna and consensus. Any determinant (*ḥukm*) arrived at in the service of public welfare (*maṣlaḥa*) had to protect the normative intentions (*maqāṣid*) of the law as revealed by the three primary sources. Al-Ghazālī accepted the concept of *maṣlaḥa* only if the intentions of the revealed law (*al-muḥāfaẓa 'alā maqṣūd al-shar'*) were preserved and promoted at all times.[59] In terms of their conduct, those who had been made liable (*mukallafūn*), were required to preserve: (1) religion, (2) life, (3) sanity, (4) lineage and, (5) property.

Any notion of public welfare which was not related to the sources of the law was deemed to be "specious" (*al-maṣālih al-gharība*).[60] Such notions were invalid and did not coincide with the disposition of the *shar'*, al-Ghazālī said. Furthermore, he said, that whoever enforced invalid notions of public welfare assumed the role of a "legislator." Recalling that al-Shāfi'ī had said that the practitioner of legal preference (*istiḥsān*) had actually unlawfully legislated, al-Ghazālī concluded, that invalid derivations of public welfare were condemned.[61] Seeking to legislate purely on the basis of public interest

---

[57] *Mu*, 1:284.

[58] *Mu*, 1:294.

[59] *Mu*, 1:287.

[60] *Mu*, 1:310.

[61] *Mu*, 1:311.

would have been tantamount to arbitrary legislating.[62] However, any public interest (*maṣlaḥa*) ruling that secured a *shar'i* intention (*maqṣad*) and ensured that such an intention was derived from the Book, Sunna and consensus, would not stand accused of personal legislation.[63] Having linked *maslaha* to the objectives of the *shar'*, al-Ghazālī added:

> ... there is no manifest aspect of dispute in following it [*maṣlaḥa*]; in fact it becomes mandatory to decisively consider it as an authoritative proof (*ḥujja*).[64]

Superficially, it may seem that al-Ghazālī was narrowing the scope of *maslaha*, for he explicitly deprived it of any status as an independent source of law. However, if we examine his views in terms of the dialogical sequence in the text, another picture may emerge. He asked the rhetorical question:

> If it is asked: In almost all the issues [discussed] you have inclined to the concept of public interest (*al-maṣāliḥ*), yet you categorise it among the imaginary sources. Why not attach it to the sound sources so that it can become a fifth source after the Book, Sunna, consensus, and reason?[65]

Al-Ghazālī's reply to that question is not only interesting but also provided an insight into the extensive role *maṣlaḥa* played in his juristic thought. He told his reader that *maslaha* in his view was about securing the intentions (*maqāṣid*) of the *shar'* which were derived from the "sources of the law." Upon careful observation, he said, you would note that every ordinary derivation of determinants (*aḥkām*) from the Qur'ān, Sunna and consensus was nothing short of securing the intentions of the law. So effectively, he regularly gives effect to considerations of public interest (*maṣlaḥa*) whenever he dealt with the sources of law outside the specific method of juristic syllogism (*qiyās*). If one were to criticise him for not making *maṣlaḥa* a fifth source, then his response was that *maṣlaḥa* was implicit in the mainstream methodology of legal theory anyway! The only difference would be that of

---

[62]*Mu*, 1:315.

[63]*Mu*, 1:311.

[64]Ibid.

[65]*Mu*, 1:310.

nomenclature. Public benefit derivations not formally derived via juristic syllogism was called "an unregulated benefit" (*maṣlaḥa mursala*). In these assertions of al-Ghazālī we can see a mitigated version of the later Najm al-Dīn al-Ṭūfī (d. 716/1316) who with the exception of devotional matters, subjected everything in law to the test of human welfare and public interest.[66]

His assertions of seeing public interest at the core of law aside, al-Ghazālī limited the search for the intentions of the law to the first three of the four accepted sources of Islamic law. By doing so, he introduced a mechanism of restraint against unfettered subjectivity in law. His method limited arbitrary and invalid citations of *maṣlaḥa*, but at the same time also allowed ample space for creative jurisprudence. Once a talented jurist could illustrate, in cases where there were no decisive guidance, that a determinant complied with an intention(s) of the law, it became a valid ruling on the grounds of *maṣlaḥa*, provided it also passed other tests.

Typology of *Maṣlaḥa*

Al-Ghazālī divided *maṣlaḥa* into three types:

(1) permissible: supported by evidence of the revealed law (*shar*ʿ)

(2) void: not supported by the revealed law

(3) acceptable: because the revealed law is indifferent on the matter.[67]

An example of the permissible type would determine the public interest by means of juristic analogy (*qiyās*). So for example, the prohibition of intoxicants based on the prohibition of wine, was in support of the sound public interest consideration of protecting

[66]Ibid.

[67]*Mu*, 1:284.

reason and sanity. Reason and sanity were the causes of legal liability (*manāt al-taklīf*) and disturbing these faculties could lead to the obsolescence of the *shar*ᶜ.[68]

An illustration of the void type is the juridical response (*fatwā*) by some jurists, especially Yaḥyā b. Yaḥyā al-Laythī (d. 234/848), the student of Mālik who ordered a king to fast for two consecutive months in expiation for intentionally breaking his fast by indulging in sex while fasting in Ramaḍān.[69] Expiation by fasting was only meant for the one who could not afford to free a slave. This ruling was specially designed by the jurists on the grounds of public interest for kings and aristocrats. The intention was to provide a harsh deterrent for wealthy persons for whom freeing a slave would not serve the purpose of deterrence, but fasting would. Al-Ghazālī rejected such rulings on two grounds. Firstly, that the public interest doctrine went contrary to the decisive textual legislation. Secondly, if and when the kings and rich discovered that the ruling was the making of juristic opinion, they were bound to question the integrity and credibility of the learned scholars of religion (*ᶜulamā'*) at large. As a consequence, people would lose confidence in the validity of the *responsa* (*fatāwā*) which the *ᶜulamā'* might issue in future, since they would suspect it to include personal distortions of the *sharīᶜa*.[70] Al-Ghazālī raised a dire warning about such practices saying that this type of reasoning "will lead to changes to all the limits (*ḥudūd*) of the revealed laws (*sharāᶜi*) and their textual sources (*nuṣūṣ*) because of the [ongoing] changes in circumstances."[71]

The difference between a *maṣlaḥa*-ruling based on juristic syllogism and one based on "unregulated benefits" (*al-maṣāliḥ al-mursala*) is that the former has a textual source as analogue and point of reference. In the case of the latter (unregulated benefits), a jurist

---

[68]*Mu*, 1:285.

[69]al-Shatibi, *al-Iᶜtisam*, 2:114.

[70]*Mu*, 1:285.

[71]Ibid.

arrives at the intended meanings of the *shar*^{c} by means of induction preceded by a comprehensive summary of the relevant indicants (*adilla*), the circumstantial evidence (*qarā'in*) and divergent signs (*tafārīq al-amārāt*) from the sources.[72] In addition, an unregulated benefit (*maṣlaḥa mursala*) must pass three rational tests:

(1) the test of necessity (*ḍarūra*)

(2) the test of decisiveness (*qaṭ*^{c}*ī*)

(3) the test of universality (*kullī*)[73]

While *maṣlaḥa* becomes operative in instances of an absence of an explicit regulation (*mursal*), or as a result of necessity (*ḍarūrī*), the criteria of decisiveness and universality were included to provide epistemological certitude and eliminate arbitrariness in the law.

Maslaha of the third type is where the law is indifferent and the search for the determinant is thus open to discussion (*fī maḥall al-naẓar*). Al-Ghazālī preferred to demonstrate this type of *maṣlaḥa* by dividing its "intrinsic properties" (*bi i*^{c}*tibār quwwatihā fī dhātihā*) into three levels or orders of benefits:

(1) essentials (*al-ḍarūrāt*)

(2) supplementary (*al-ḥājāt*)

(3) embellishments (*al-taḥsīnāt and al-tazyīnāt*)

First order benefits, essentials, were designed to protect and promote the five objectives of the revelation: religion, life, sanity, lineage and property. According to al-Ghazālī:

---

[72]*Mu*, 1:311.

[73]*Mu*, 1:296.

> Everything that involves the preservation of these five principles (*al-uṣūl al-khamsa*) is a utility (*maṣlaḥa*) and everything that forfeits these principles is an injury (*mafsada*), the avoidance of which will be tantamount to a public interest.[74]

In the case of first order benefits, a jurist could reach a conclusive determinant (*ḥukm*) without reference to a specific source.[75] Second and third order benefits (necessities and supplements) could not generate compelling determinants (*aḥkām*) on their own without the justification of a source, even though theoretically a master-jurist could arrive at an individual opinion. The only caution al-Ghazālī offered was that 'if the revelation does not provide an opinion (*al-ra'y*) it would be tantamount to preference (*istiḥsān*)."[76] If however, the opinion was derived from a source, then it would become an analogy.

For al-Ghazālī these five principles were not only desirable in the objectives of Muhammadan jurisprudence but were also applicable to other religious dispensations.[77] In a major leap al-Ghazālī makes the objectives of public welfare the *somum bonum* of all religion. He said:

> It is prohibited to alienate these five principles and suppress these, [a fact which is] impossible [to conceive, to the extent] that any community among communities (*milla min al-milal*) and any revealed dispensation among dispensations (*sharī'a min al-sharā'i'*) could be without them, [especially] if the intention is to reform creation. [It is precisely] for this very reason that all the revealed dispensations (*sharā'i'*) did not differ in their prohibition of infidelity, manslaughter, fornication, theft and the consumption of intoxicants.[78]

---

[74]*Mu*, 1:287.

[75]*Mu*, 1:294.

[76]*Mu*, 1:293-4.

[77]By Muhammadan I mean the specific jurisprudence which developed out of the revelation received by the Prophet Muhammad.

[78]Al-Ghazālī has an awkward way of putting this. The Arabic text reads: *wa taḥrīm tafwīt hādhihī al-uṣūl al-khamsa wa al-zajar 'anha yastaḥīlu an la tashtamila 'alayhi millatun mina al-milal, wa shari'atun min al-sharā'i' allatī urīda bihā iṣlāḥ al-khalq*. The sense is easily derived from this sentence, that al-Ghazālī says it is impossible to conceive any revealed legislative dispensation to be free from public interest considerations. But the sentence following it, *"wa taḥrīmu tafwīt hādhihī al-uṣūl..."* does not

By stating his case in such emphatic terms it became clear that al-Ghazālī placed a premium on public welfare considerations in legal theory. Not only did he view it as a universal consideration in juristic ethics, but this universalism provided the grounds for the ratiocination as to why certain acts were prohibited in Islām. Once this point had been made he projected as fact that other religions also prohibited infidelity, manslaughter, fornication, theft and the use of intoxicants. Al-Ghazālī interestingly anticipated the strength of his argument being derived from the comparative dimension of his reasoning, by invoking the notion that "all religions" share in the concerns of public interest. Although his argument was sweeping and to an extent unsupported by evidence, it did disclose that religious comparisons of some sort were part of an intellectual repertoire in the fifth/eleventh and sixth/twelfth centuries.

Analogy and *Maṣlaḥa*

Maṣlaḥa can also take the form of juristic analogy. In al-Ghazālī's schema, juristic analogy (*qiyās*) as a basis of juristic deduction, especially the "relevant reason" (*munāsib*) and imagined meaning (*al-maʿna al-mukhayyal*), were the equivalent of public interest (*maṣlaḥa*).[79] The essence of analogy for al-Ghazālī was "adopting a determinant [on the basis of] the intelligibility of a textual source and consensus" (*huwa iqtibās al-ḥukm min maʿqul al-nass wa al-ijmāʿ*).[80] Every determinant (*ḥukm*) was precipitated by a legal cause or legal sign (*ʿilla*). Inference (*instinbāṭ*) was one of the approved methods of finding the *ʿilla*. There were two valid types of inference:

---

make much sense. Perhaps it should read: *"wa ḥarāmun tafwīt hādhihī al-usūl."* Or that *taḥrīm* here, in a very contrived manner means *ḥarām*. That is the only way it can make sense to me (*Mu*, 1:288).

[79].M 1:287.

[80]*Mu*, 1:284. Perhaps the "*wa*" meaning the "and" should have read "*aw*" meaning "or". For surely an analogy based on any textual source or a consensus ruling would be sufficient grounds. It does not require both a textual source and consensus to validate the analogue.

(1) observation and classification (*sabr wa taqsīm*); and

(2) relevancy or affinity (*munāsaba*).

According to al-Ghazālī, in order to demonstrate the relevance of the reason (*munāsib*) with the determinant (*ḥukm*), analogical inference would suffice.[81] Al-Ghazālī admitted that analogy on the grounds 'relevance" was a controversial (*mukhtalaf fīhi*) proposition, similar to the doctrine of public interest (*maṣāliḥ*). Defining the basis of analogy by relevancy, he said: "When the determinant (*ḥukm*) is associated to a relevant reason (*munāsib*) it is [rationally] regulated (*intaẓama*)."[82]

Munāsib, according to al-Ghazālī could be divided into three main types:

(1) effective (*mu'atthir*)

(2) appropriate (*mulā'im*)

(3) specious (*gharīb*).[83]

Relevance of the "effective" type was when the impact (*ta'thīr*) of the determinant was evident in the consensus decision or textual evidence (*naṣṣ*). For instance in the ruling that "whoever touches his pudendum must take ablution" the impact of touch is so self-evident that on the basis of the analogy of affinity the act of touching someone else's pudendum would have the same ruling.

Relevance of the "appropriate" type (*mulā'im*) would be when the impact of the relevance is not identical, but of the same genus (*jins*). A small amount of a date or raising beverage (*nabīdh*), even if it does not inebriate, was prohibited on the analogy of the prohibition of wine. The underlying reason was that a small amount of *nabīdh* would lead

---

[81]*Mu*, 2:296.

[82]*Mu*, 2:297.

[83]Ibid.

to the consumption of a larger amount. In this argument of relevance, the genus of the rule, namely inebriation was considered. Another example was that it was not compulsory for a menstruating woman to compensate for prayers missed during her periods, but she would have to compensate for the fasts missed as a result of her menses. The hardship of having to compensate several days of lost prayers was the grounds for prayers being excused.

Relevance of the specious (*gharīb*) type would occur when the effective and appropriate affinities were not manifest. An example was the prohibition of wine because of its intoxicating qualities. For this reason all intoxicants were prohibited even though the effect of intoxication may not have manifested itself in another instance.[84]

Al-Ghazālī admitted that the relevance (*munāsaba*) of analogy differed to the extent that it depended on the judgement of the individual jurist.[85] At times it may have generated a level of probability that was persuasive but not at other times. "It is not possible to exactly define the levels of relevance since every case which the jurist (*mujtahid*) will investigate has a special flavour."[86]

There are four categories of an relevant reason (*munāsib*) in terms of it being supported by a specific source:[87]

(1) A *munāsib* supported by a specific source and which is categorically accepted by analogists;

(2) A *munāsib* not supported by a specific source and which is rejected by analogists. This, according to al-Ghazālī was tantamount to preference (*istiḥsān*) and making law

---

[84]Ibid.

[85]*Mu*, 2:305.

[86]Ibid.

[87]*Mu*, 2:306.

according to personal opinion (*waḍ' li al-shar' bi al-ra'y*).[88] An example of this would be denying a murderer a share in the inheritance of the murdered victim. There was no specific textual source supporting such a ruling, but it was designed to thwart the intention of the murderer.

(3) A *munāsib* which is supported by a specific source, but it is not suitable and falls in the realm of *ijtihād*.

(4) A *munāsib* not supported by a specific source. This was known as unregulated reasoning (*al-istidlāl al-mursal*).

Applications of *Maṣlaḥa*: Illustrations

Issues of public interest are clearly 'hard cases" Al-Ghazālī posed questions about certain cases to demonstrate the complexity of public welfare considerations of a sensitive nature. This was especially true when there were no regulated jurisprudential guidelines, as in the case of *maṣlaḥa* and yet the jurist had to provide a judgement which expressed the essence of the legal tradition in a convincing and non-arbitrary manner.

Killing a Human Shield

If a non-Muslim enemy used Muslim captives as human shields in order to ward off an attack by a Muslim army, was it permissible to assault the enemy and in the process take the life of the innocent persons used as shields? The context was such, that if the enemy was not conquered, this defeat would expose the entire Muslim community to either death or captivity. Note, that al-Ghazālī did not enter into discussion as to whether our knowledge of the enemy's capacity to exterminate the Muslims is decisive or probable knowledge - a point to be raised later.

---

[88]Ibid.

The crucial ethico-legal question was whether an innocent person can be killed for the sake of the greater good when there is an explicit and decisive injunction prohibiting the taking of innocent life? The argument which justified taking the lives of the human shields went as follows: the prisoners would probably be killed, whether the Muslim army attacked or not. If the entire Muslim community were to be saved from sure death and destruction but at the expense of the death of a limited number of Muslim hostages, then "saving the majority of Muslims is closer to the intention of the revelation."[89]

We know categorically, said al-Ghazālī, that the intention of the *shar*^{c} is to decrease the amount of killing, if it could not prevent the taking of human life. This intention of the *shar*^{c} was known from several indicants. On the other hand, the death of the few is known to be in the public interest by way of necessity. This was clearly a case of an unregulated public interest (*maṣlaḥa mursala*) type of decision for which there was no specific source or text as basis. This case of *maṣlaḥa* passed the rational test of being necessary, decisive and universal. The killing of the few hostages was necessary since there was no other viable alternative. Sparing the lives of the entire community was not speculatively known, but definitively known. This ruling did not serve the interest of a small group, but served everyone's interests and was therefore acceptable in terms of a universal imperative.

A crucial point in the human shield case, was the situational analysis which was pivotal to public interest consideration. The analysis must have suggested decisively that failing to attack the non-Muslim enemy, and by implication saving the innocent human shields, would have resulted in the extermination of the entire Muslim community. As noted above, al-Ghazālī did not examine whether the threat of defeat was based on decisive or probable knowledge, which was also one of his rational tests. He quickly

[89]*Mu*, 1:295.

conceded that this was a debatable point, and therefore the jurists of ʿIrāq had produced two views. Even if the threat was not viewed as being based on decisive knowledge, knowing the level of probability to be closer to certainty was also acceptable to him as a test. The actual threat had to be judged as not only affecting a limited number of people, but many, and, therefore, it would become universal. Moreover, the epistemological value of the indicant (decisive or probable) would take a secondary role. It appears that al-Ghazālī placed a higher value on universality in his three-point test of *maṣlaḥa* cases.

When there was a clash between two public interests (*maṣlaḥatān*) or two intentions (*maqṣūdān*) of the revelation, one must choose the stronger intention and public interest. Put another way, one should avoid the greater of two evils. In the case of killing the human shield two intentions of the law clashed: the public interest to defeat the enemy because of the grave threat they posed, on the one hand, and the consideration that life was sacred and should not be taken without a just cause. The killing of the human shield was not in itself a just cause. In the case of such a choice there was a need to give preponderance to the universal (*kullī*) over the particular (*juzʾī*).[90] Al-Ghazālī's anonymous interlocutor disagreed with him on two scores. First, to avoid going to war with the enemy in such dire circumstances were not in contravention of the intention of the revelation. Second, one could not just dismiss the particular (*juzʾī*) without sound textual evidence (*naṣṣ*). In his reply al-Ghazālī said that not to fight would lead to the extermination of Islam, and by implication the continuance of the religion must be viewed as an intention of the revelation. Devaluing the particular could be proved from more than one textual source, he said.

[90]*Mu*, 1:313.

Human Shield at a Fort

In a second case an opposing army makes an enemy fort impregnable by using an individual Muslim as a human shield. The situation was such that no serious threat to the safety and security of the Muslims at large emanated from the occupation of this fort. In such a case, it would not be permissible to take the life of the human shield in order to overrun the fort, said al-Ghazālī. The reason for this was that such an action would not have passed the rational test. There was no "necessity" to conquer the fort, nor was there any "decisive" assurance of victory, in his view. Although he did not address the test of "universality," it was self-evident that the conquest of the fort did not fulfill any of the "essential" needs of the Muslim community.

Emergency at Sea

The third case involved an emergency at sea, where an endangered ship had a few persons on board. For some reason it was decided that one or some passengers had to be thrown overboard in order to assure the safety of the rest. If this did not happen everyone on board would be endangered. Would it be permissible to identify those person(s), even if it meant drawing lots, and allow them to drown? While this case may have resemblances with the human shield case, it remained different in one main aspect. It did not involve the universal interests of the entire Muslim community, but only affected the fate of a few persons at sea. The objective of saving a few did not warrant the sacrifice of one person and therefore it was not permissible.[91]

Amputating a Gangrenous Hand

Did the terms of *maṣlaḥa* permit one to amputate a gangrenous hand in order to save one's life? There were precedents in law which permitted a limited amount of injury to oneself if this brought benefit, such as phlebotomy and cupping. In an emergency, one

---

[91] *Mu*, 1:296.

was permitted to eat the flesh of one's thigh if faced with the threat of starvation, which could be viewed as analogous to amputating a gangrenous hand. But al-Ghazālī argued, to the contrary, that amputation itself could become the main reason for the subsequent fatality, since there was no certainty of remedy in amputation, and hence the benefit was not a decisive one.

Torturing a Suspect

Al-Ghazālī was asked if he viewed torturing a person suspected of theft in order recover the stolen property to be a matter of public interest.[92] Al-Ghazālī said that, although the view of torturing a suspect was attributed to the Madīnan jurist Mālik. b. Anas, the Shāfi'īs did not accept it. His rejection was not because he did not see any public interest being served, but because it conflicted with a competing interest, the duty not to harm an innocent person. The danger of possibly indemnifying the guilty was less harmful than wrongfully torturing the innocent. On the basis of competing public interests, al-Ghazālī favoured the path causing least harm.

Executing a Repentant Heretic (*Zindīq*)

Al-Ghazālī was asked if he agreed with the view that it was in the public interest to execute one who had concealed his unbelief (*zindīq*), even though he had repented. The execution of a repentant heretic conflicted with the statement by the Prophet, on whom be peace: 'I have been commanded to fight people until they say there is no other deity except Allah." In terms of this statement, the heretic could not be executed. Al-Ghazālī admitted that this case was open to juristic discretion (*ijtihād*).[93] One could agree to the execution of a *zindīq*, he said, since the statement on the profession of faith addressed Jews and Christians, since it indicated their conversion. A heretics on the other hand,

---

[92]*Mu*, 1:297.

[93]*Mu*, 1:298.

would find dissimulation and concealment to be the very basis of their heresy. If one favoured execution, then from the point of view of legal theory, it was a notion of *maṣlaḥa* that entailed specifying (*takhṣīṣ*) the generality of the prophetic statement, which would then mean that only certain people would be protected by conversion and confession, thereby excluding the application of the Prophet's statement to heretics. *Maṣlaḥa*, in terms of this illustration could then mean reverting to an interpretative method.

Al-Ghazālī was pressed to explain his inconsistency in allowing the killing of human shields under necessity, on the one hand, but disallowing the execution of a repentant heretic. This was after he had established a rule that *maslaha* cannot contradict a decisive textual authority (*naṣṣ*). He was also reminded of his strong disapproval of Yaḥya b. Yaḥya al-Laythī's *fatwā* for going beyond the explicit textual authority. In the case of the execution of the repentant heretic he clearly violated a decisive textual authority. He conceded that his ruling fell within the realm of juristic discretion (*maḥall al-ijtihād*) in which a ruling to the contrary was not unlikely.[94]

Executing an Agitator

In the case of an agitator who engaged in public incitement to disorder, pillage, loss of life and heresy, the doctrine of *maṣlaḥa* could not be used to justify the execution of such a person, al-Ghazālī said. If the crime did not fit the death penalty, he said, then life imprisonment - not execution - should be the sentence. In his view, the public interest in this case was not a "necessary" one. Al-Ghazālī stated that his view would remain the same even if it was argued that the government was weak and unable to deter such agitators, and that if they were imprisoned a new government would grant them amnesty. These were imaginary scenarios, al-Ghazālī said, for there was no assurance that the

[94]*Mu*, 1:302.

regime would change and the prisoners would be released. Executing people on grounds of imagined public interest was not allowed.

Taxation

If taxation (*kharāj*) was considered to be among issues of public welfare, could it be imposed?[95] Al-Ghazālī said that new funds could only be levied if the army did not have sufficient funds to defend the Islamic borders. If the security of the state was threatened leading to social disorder as a result of a shortage of money, then a tax on the wealthy which would satisfy the needs of the armed forces could be imposed. Al-Ghazālī here advocated an unregulated benefit (*maṣlaḥa mursala*) since there was no specific established precedent for such a ruling. Faced with choosing between two evils - taxes or social disorder, the purpose of the law was to avoid the worse of two evils.

Discretionary Punishment for Consumption of Wine

Al-Ghazālī was asked if the stipulated penalty (*ḥadd*) for drinking wine was prescribed, and if so, on what grounds of *maslaha* did the Companions of the Prophet have increase the penalty to 80 lashes?[96] If it was not prescribed, but was a discretionary penalty (*ta'zīr*), then on what grounds did they find drinking to be analogous to slander to implement that ruling for the consumption of intoxicants?

The correct position, he said, was that it was not a prescribed penalty. The penalty for drinking during the Prophet's time an arbitrary number of beatings with shoes and garments. Later that sentence was approximated and settled at 40 lashes. After that, the community felt the need to increase the number of lashes on the basis of public interest,

---

[95]*Mu*, 1:303.

[96]*Mu*, 1:305.

given the fact that the ruler had the liberty of jurisdiction in discretionary penalties. This liberty, said al-Ghazālī, would support the claim that the rulers had been empowered by consensus to be the guardians of public welfare.[97] However, the rulers felt constrained by the precedent penalty set by the Prophet on drinking and did not wish to transgress the Prophetic ruling. Therefore, they felt more comfortable in issuing a punishment which was in keeping with an explicit and decisive ruling, namely slandering. Consuming wine was considered to share some features in its consequences with slandering, and therefore fell within the presumption (*maẓanna*) of slander. The reasoning underlying the analogy was that the inebriated person became irrational, and that an irrational person was prone to slander. Therefore 40 lashes, as a penalty, for slandering was adopted by analogy as the prescribed punishment for drinking wine. The increase in the penalty from 40 to 80 lashes took place on grounds of public interest.

From the reasoning applied to the *maṣlaḥa*-ruling on wine drinking, al-Ghazālī said, the law considered the *presumption* of something as being *equivalent* to the materialisation of the *thing* itself. He cited several examples: sleeping was presumed to be the equivalent of ritual impurity (*ḥadath*) of the minor kind, since one's ablution had to be redone; puberty was considered to be the same as attaining reason. Causes such as sleeping, and puberty, fell within the presumption of the materialisation of the actual acts of minor ritual impurity or mental maturity. Therefore, the ruling of increasing the penalty for drinking from 40 lashes to 80 was not contrary to the textual evidence (*naṣṣ*), if one followed the reasoning of presumption.

---

[97] *Mu*, 1:306.

Conclusion

In trying to get a picture of al-Ghazālī's jurist working in the public interest I examined three aspects. Firstly, I explored and described al-Ghazālī's views on the qualification of the master-jurist. Secondly, I explored the validity of juristic discretion. Thirdly, I described at some length al-Ghazālī's notion of public interest (*maṣlaḥa*), its types, conditions, and the tests he provided for the validity of *maṣlaḥa*. More importantly, I examined some of the seminal cases of *maṣlaḥa* used by al-Ghazālī.

The pattern that emerges is that on the one hand al-Ghazālī commits himself unambiguously to an open juristic canon by liberalising the qualification of the master-jurist (*mujtahid*). If there was a move to restrict and proscribe juristic discretion (*ijtihād*) in al-Ghazālī's day there was no evidence of it in *al-Mustaṣfā*. One indication that there was no such move, was the absence of any polemical and dialectical arguments in the section on *ijtihād* when al-Ghazālī proposed reducing the standard of qualification to become a master-jurist. If there was opposition to *ijtihād*, then al-Ghazālī would have undoubtedly engaged his interlocutors. It is however, most likely that he viewed himself as a master-jurist (*mujtahid*) albeit within the Shāfi'ī school, since he qualified in terms of the criteria proposed. One can thus deduce that for al-Ghazālī the openness of the juristic canon was certainly a positive move. He surely must have been aware of the risks and instability an open-ended legal system could pose, given the ideological and sectarian competition of his time, yet he felt it necessary to advocate openness.

On the topic of *maṣlaḥa* where the juristic brilliance of any master-jurist is tested, al-Ghazālī's views of juristic discretion were demonstrated by the restrictions he imposed in response to the subjective nature of public interest debates. We see al-Ghazālī's jurist as an objectivist trying to restrict *maṣlaḥa* to rigid tests by developing a hierarchy of needs. *Maṣlaḥa* arrived at by juristic syllogism (*qiyās*) and a suitable (*munāsib*) analogy was his

preferred choice. On the other hand, he also asserted that any ordinary deduction from the three main sources of law - Qur'ān, Sunna and consensus - was actually nothing other than a deduction which gave effect to public interest considerations. His only caveat was that public interest considerations should not conflict with an explicit and decisive rule of the *sharī'a*. Overall, al-Ghazālī implied that all the sources of law were intrinsically related to the needs of *maṣlaḥa*. He found it too radical to explicitly declare *maṣlaḥa* as the fifth source of law, but implicitly succeeded in saying so. Although he was not explicit about the universality of public interest concerns in religious law, the difference between al-Ghazālī and the famous but controversial Ḥanbalī jurist, al-Ṭūfī, who held that all laws were subject to the criteria of public interest, can only be deemed marginal.

Even though some scholars believe that al-Ghazālī treated *maṣlaḥa* with reservation and rejected human utility, I believe that I have demonstrated that his efforts had far-reaching consequences.[98] Al-Ghazālī's reasonably complex treatment of *maslaha* opened the way for later scholars to amplify the doctrine. Al-Shāṭibī for instance, reverted to some of al-Ghazālī's views to further his study of *maṣlaḥa*, even though al-Shāṭibī's treatment was much more elaborate. If it were not for the qualified approval of *maslaha* by such leading lights of the Islamic intellectual tradition as al-Ghazālī, al-Shāṭibī's task of expanding and elaborating on the role and function of *maslaha* in law would have been all the more difficult.

Al-Ghazālī demonstrated that the sources of legislation were connected to revealed intentions (*maqāṣid*) of the law, which were in themselves rationally derived. The five intentions or meta-principles of the law were identical to public welfare considerations. This aspect of al-Ghazālī's legal theory which appeared to have confidence in rationality

[98]Muhammad Khalid Masud, *Islamic Legal Philosophy* (Islamabad: Islamic Research Institute, 1977), 156.

and human capacity was perhaps at variance with his theological determinism that the good and detestable could only be determined by nomothetic discourse, and not by reason. Reason, previously considered to be an aid to understanding revelation, in the context of *maṣlaḥa*, along with discretion, even had the capacity to determine the moral value of unregulated forms of public interest, known as *maṣlaḥa mursala*. The debate on *maṣlaḥa* highlights a tension underlying al-Ghazālī's legal philosophy. On the one hand he acknowledges the capacity of human beings to discern utilities and benefits on those issues where the law had not provided any clear guidelines. Elsewhere, I have shown that al-Ghazālī believed that reason had no capacity to make ontological judgements of good and bad. Al-Ghazālī thus tried to hold on to two ends: a form of moral rationalism, on the one hand, and Ashʿarite determinism on the other.

When al-Ghazālī connected the law to the service of five universal meta-principles, there was clearly an admission of human utility. One cannot avoid the observation that at times al-Ghazālī actually became crudely utilitarian and morally relativistic. This can be viewed from his analysis and judgement of killing the hostages in case of the human shield. His relativism does not stem from the instability of language, but also the inscription of theology in the language of law. Therefore, he is consistent with the "incurable relativism" to be found in Sunnī theology, especially as a consequence of the rational moral relativism.[99]

Clearly, the most important part of the discipline of legal theory deals with language. Legal language constituted signs and not oracles, as it was sometimes wrongly presumed. Probable indicants, said al-Ghazālī, were signs (*amārāt*) which have no volition of their own but were constantly shifting given the location of the language-user. Al-Ghazālī as we know tried to stabilise language by inscribing on language certain

[99]Fazlur Rahman, *Islamic Methodology in History*, 162.

theological assumptions. In the discussion of *maṣlaḥa* and *ijtihād*, it was the linguistic component that was largely responsible for the semiotic openness of juristic debates.

Al-Ghazālī here found himself on the horns of a dilemma between the openness of juristic discretion and the method of arriving at public interest decisions which were seemingly inclined to closure. At the same time the shifting linguistic signs make stable and rigid interpretations difficult. Al-Ghazālī thus had to navigate these complex contradictions in his legal theory.

Conclusion

Despite being an influential figure of middle of Islām, al-Ghazālī's role as jurist and theorist had been underplayed in the Muslim intellectual tradition. Well known for his innovative contributions to theology, Sufism and philosophy, his equally valuable contributions to Islamic jurisprudence and legal theory had gone unappreciated for centuries. This investigation suggests that one of the reasons why his role as a jurist had remained uncelebrated for so long was because of his controversial intellectual style, his pragmatic politics and his honest public self-appraisal in his autobiography.

Al-Ghazālī's intellectual style was innovative and bold. This thesis has shown that he transgressed the accepted boundaries of disciplines and conventions on numerous occasions. For this, he earned the opprobrium of many of his contemporaries. What caused more outrage than anything else was the fact that he accepted and integrated elements of "foreign knowledge," such as logic and dialectical theology into his study of legal theory. His autobiography bears testimony to the fact that he experimented with mysticism and some of its practices which were considered to be eccentric and antinomian. This unconventional profile was viewed as contrary to the conservative juristic conventions, which demanded consistency, formality and stability. The Shafi'i school, to which al-Ghazālī claimed allegiance, honoured him as one of their foremost intellectual lights, but always in his capacity as the defender of the faith *Hujjat al-Islām (Authority of Islam)*, as a theologian - never as a jurist. Though reference is made to his juristic works, little real credence is given to his seminal contributions in this field. His juristic writings were neither mediocre nor pedestrian. If they had been so, the Shāfi'ī jurist, al-Rāfi'ī would not have considered them worthy of commentary. Al-Rafi'i acknowledged al-Ghazālī as a critical link between al-Shāfi'ī and later Shāfite jurists. Ibn Rushd, despite his repudiation of al-Ghazālī's critique of philosophers, admired his legal theory in *al-Mustaṣfā* and deemed it worthy of an abridgement as *al-Ḍarūrī fī Uṣūl al-Fiqh* (*The Requisite in the Science of Principles*).

Al-Ghazālī's interventions in legal philosophy, as evident in *al-Mustaṣfā*, demonstrated his ability to present legal theory as a meta-theory of an inter-disciplinary nature. He also provided a lucid and rational structure for the discipline - applying to it the framework of the four pivotal axes. In doing so, he attempted an integration of law, language and theology into one seamless garment of legal theory. On their own, these disciplines, especially theology and law, were the subject of intense rivalry within legal schools.

Al-Ghazālī realised that legal theory, given the primacy of law in Muslim culture, was the key discipline and as such could not be allowed to be exposed to the vagaries of controversy and tensions. He perceived the necessity for the resolution of disputes in order to harmonise legal theory with his reforms and innovations in theology and philosophy. In *al-Mustaṣfā* al-Ghazālī espoused the role of a public reformer. It was his legal theory designed to synchronise with his grand project of individual reform by means of Sufism, and his renewed political-theology as an ideologue in the Saljūq period.

He attempted a synthesis of the various Islamic disciplines. In doing so, he found himself in the maelstrom of contending ideological conflicts. At the official level, he was a Shāfi'ī/Ash'arite scholar recognised in the influential intellectual and political circles of his time. But, after his conversion to Sufism, al-Ghazālī underwent a philosophical shift and became more bold and innovative. Some of his pronouncements, especially on Sufism were viewed as subversive, as the criticisms of al-Māzarī, al-Dhahabī, Ibn al-Jawzī and Ibn Ṣalāḥ suggested. These criticisms were not unfounded, for, if viewed from the conservative position of the time, then the later al-Ghazālī was undoubtedly subversive, and demonstrated great creativity, courage and brilliance as a *bricoleur*. His general approach to the Islamic disciplines, seeing himself as a synthesiser of various disciplines, was too subversive for the intellectual mood of the sixth/twelfth century. Were it not for his masterly contribution to Islamic mysticism in his *Iḥyā' 'Ulūm al-Dīn* and the refutation

of some of the views of the philosophers in the *Tahāfut al-Falāsifa*, one could say, without too much fear of contradiction, that al-Ghazālī may not have been immortalised in the Islamic tradition.

My close reading of *al-Mustaṣfā* reveals that, as a *bricoleur*, he tried to integrate the antinomies within the Islamic discourse. On the one hand, he tried to retain the traditional expression of religion and projected the supremacy and finality of the nomothetic discourse of the revelation (*khiṭāb al-shar*ᶜ). On the other hand, he found himself compelled to employ ideas and methods which were considered to be outside the Islamic tradition, such as logic, philosophy, and Sufism. For example, he was aware that the rational and speculative discourses of *kalām* could provide stability to the first premises of legal theory beyond contention. He recognised that language was the most important component of legal theory. Here again he was caught between the stable pretensions of language set by metaphysical decree and the reality of changing language-use. In his explication of the determinant (*ḥukm*), liability (*taklīf*) and juristic ethics (*taḥsīn wa taqbīh*), al-Ghazālī demonstrated that as commonplace as these notions may have been, their conceptual framework rested on a particular understanding of language. Grasping what constituted a determinant (*ḥukm*) relied on a unique understanding of inner speech (*kalām al-nafs*). To understand liability (*taklīf*) demanded a more conventional understanding of language. Juristic ethics related to liability in turn required a complete submission to the sovereignty of the nomothetic discourse (*khiṭāb al-shar*ᶜ). The notion of the *ḥukm* depended an epistemological framework that had the ability to shift from a metaphysics of language (*kalām al-nafs*) to a nominal view of language (*kalām al-lafẓ*), in one instance. Al-Ghazālī accomplished this through a variety of rhetorical strategies, employing linguistic tropes and metaphors that continuously masked the obvious discontinuities and contradictions.

In the application of law, he attempted to achieve a balance between fidelity to the revealed text, by emphasising the proper use of the sources, on the one hand, whilst also allowing a significant amount of subjectivity, relativity and human discretion, on the other. This was evident in his implicit statement about the openness of the juristic canon, and the omnipresence of public interest (*maṣlaḥa*) considerations in human transactions. I believe that al-Ghazālī's implicit statements about the role of public interest in law set the scene for later jurists like al-Ṭūfī and al-Shāṭibī to elaborate and stress its crucial role in Islamic law.

The tensions and antinomies spawned by al-Ghazālī's attempts at achieving a synthesis of the disciplines had parallels in his own life. Questions on such taxing subjects as certainty, the essence of religion, the conflict between religion and philosophy, revelation and reason, power and ideology, conformity to authority and individual discretion were some of the antinomies that recurred continuously. As an intellectual reformer, al-Ghazālī was caught up in the vortex of antinomies and contradictions, but was determined to give stability and consistency to the intellectual edifice of Islām.

In his bid to stabilise both the edifice of the meta-theory of law, namely legal theory, and the Islamic disciplines in general, al-Ghazālī vacillated between binary and polar opposites. His grand philosophical narrative for stability exhausted itself. Language itself, and theology - another type of language - continuously undermined the pursuit of stability, for narratives are actually forms of social interaction which involved making moves in the language game, be it *kalām*, *uṣūl* or *falsafa*. The self, here the Ghazalian self, was the shifting intersection, a moving nodal point, which created the instability. The pursuit of stability was not woven with a single thread, but contained as many threads as there were social bonds. Participation in the pursuit of stability and the maneuvering within language involved an agonistics. It involved a polemical and rhetorical athletics, making moves with the imagination as in a game, discovering new rules and making up the

game as al-Ghazālī went along. Juxtapositioning, sleight of hand and multiple definition of terms were some of the key features in these rhetorical moves. In one instance al-Ghazālī wished to keep juristic discretion (*ijtihād*) alive but in its application he proposed a method of control over such discretion.

Finally, it must be said that al-Ghazālī was an intellectual who constantly searched for the permanent and the stable in order to end doubt and uncertainty, but that ideal proved to be as illusive as it was real.

Bibliography

European Language Sources

Abdel Haleem, M. A. S. "Early Islamic Theological and Juristic Terminology: *Kitāb al-Ḥudūd fī al-Uṣūl* by Ibn Fūrak." *Bulletin of the School of Oriental and African Studies* 54, (1991): 5-25.

Abrahamov, Binyamin. "al-Ghazali's Theory of Causality. *Studia Islamica* 67 (1988): 75-98.

_____. "al-Ghazali's Supreme Way of Knowing God." *Studia Islamica*. 77 : 141-68.

Abrams, M. H. *A Glossary of Literary Terms*. Fort Worth: Holt, Rinehart and Winston, Inc, 1985.

Abul Qausem, Muhammad. "al-Gazali's Conception of Happiness." *Arabica* 22 (1975): 153-61.

Adonis. *An Introduction to Arab Poetics*. Translated by Catherin Cobham. London: Saqi Books, 1983.

ʿAlī, Syed Nawab. *Some Moral and Religious Teachings of al-Ghazālī*. Lahore: Shaikh Muhammad Ashraf, 1920 (1946 reprint).

Alon, Ilai. "al-Ghazali on Causality." *Journal of the American Oriental Society* 100 (1980): 397-405.

Altizer, Thomas J. J., Maz A. Myers, Carl Raschke, Robert Scharlemann, Mark C. Taylor, Charles E. Winquist. *Deconstruction and Theology*. New York: Crossroad, 1982.

al-ʿAmiri, ʿAbdallah M. al-Husayn. "At-Ṭūfī's Refutation of Traditional Muslim Juristic Sources of the Law and his View on the Priority of Regard for Human Welfare as the Highest Source or Principle." Ph.D. diss., University of California, Santa Barbara, 1982.

Ansari, Zafar Ishaq. "Islamic Juristic Terminology before Šāfiʿī: A Semantic Analysis with Special Reference to Kufa." *Arabica* 19 (1972): 255-300.

Arkoun, Mohammed. *Essais sur la pensée islamique*. Paris: Editions Masonneuve et Larose, 1984.

_____. *Pour une critique de la raison islamique*. Paris: Editions Maisonneuve et Larose, 1984.

Ashtor, E. *A Social and Economic History of the Near East in the Middle Ages*. London: Collins, 1976.

Awn, Peter. "The Ethical Concerns of Classical Sufism." *Journal of Religious Ethics* 11 (1983): 240-263.

al-Azmeh, Aziz. *Arabic Thought and Islamic Societies*. London: Croom Helm, 1986.

_____ . "Islamic Legal Theory and the Appropriation of Reality." In *Islamic Law: Social and Historical Contexts*, ed. Aziz al-Azmeh, 250-65. London & New York: Routledge, 1988.

Babiker, Ali A. M. "Individual Reasoning in Islamic Jurisprudence with special reference to al-Ghazali's book *al-Mustaṣfā*." M. Litt. diss., Edinburgh University, 1970.

Bagby, Ihsan Abdul-Wajid. "Utility in Classical Islamic Law: The Concept of *Maṣlaḥah* in *Uṣūl al-Fiqh*." Ph.D. diss., University of Michigan, 1986.

Bakar, Osman. "The Meaning and Significance of Doubt in al-Ghazzālī's Philosophy." *Islamic Quarterly* 30 (1986): 31-43.

Barthes, Roland. *Elements of Semiology*. Translated by Annette Lavers and Colin Smith. London: Cape Editions, 1967.
_____ . *The Pleasure of the Text*. Translated by Richard Miller. New York: Hill and Wang, 1975.

Berman, Harold J. Berman. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge, Mass: Harvard University Press, 1983.

Bernand, Marie. "Ḥanafī Uṣūl al-Fiqh through a Manuscript of al-Ǧassas." *Journal of the American Oriental Society* 105 (1985): 623-635.
_____ . "Controverses Medievales sur le *Dalīl al-Ḫiṭāb*." *Arabica* 33 (1986): 269-94.
_____ . "Al-Ghazali, artisan de la fusion des systemes de pensee." *Journal Asiatique* 278 (1991): 231-51.
_____ . "Les Uṣūl al-Fiqh de l'Epoque Classique Status Quaestionis." *Arabica* 39 (1992): 273-286.

Becker, Alton, L. "Biography of a Sentence: A Burmese Proverb." In *Text, Play and Story: The Constitution and reconstruction of Self and Society*, ed. Edward M. Bruner, 135-55. Prospect Heights, Illinois: Waveland Press, 1984.

Bello, Iysa. A. *The Medieval Islamic Controversey Between Philosophy and Orthodoxy: Ijmaᶜ and Ta'wīl in the Conflict between al-Ghazālī and Ibn Rushd*. Leiden: E. J. Brill, 1989.

Benson, Robert W., "Semiotics, modernism and the law." *Semiotics* 73 (1989): 157-175.

Betti, Emilio. "On a General Theory of Interpretation." The *Raison d'Etre* of Hermeneutics." *The American Journal of Jurisprudence* (1987): 245-268.

Binder, Leonard. "al-Ghazālī's Theory of Islamic Government." *Muslim World* 65 (1955): 229-41.

Bleicher, Josef. *Contemporary Hermenutics: Hermeneutics as Method, Philosophy and Critique*. London: Routledge & Kegan Paul, 1980.
_____ . *The Hermeneutic Imagination: Outline of a Positive Critique of Scientism and Sociology*. London: Routledge & Kegan Paul, 1982.

Boyd White, James. *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law*. Madison: University of Wisconsin Press, 1985.
_____ . *Justice as Translation: An Essay in Cultural and Legal Criticism*. Chicago: University of Chicago Press, 1990.

Bosworth, C. E. "Abu ʿAbdallah al-Khawārazmī on the Technical Terms of the Secretary's Art: A Contribution to the Administrative History of Mediaeval Islam." *Journal of the Economic and Social History of the Orient* 12 (1969): 8-164.

Brunschvig, Robert. "Conceptions Monetaires chez le Juristes Musulmans (VIII^{e}-XIII^{e} siecles)." *Arabica* 14 (1967): 9-143.

Bulliet, Richard W. "A Quantitative Approach to Medieval Muslim Biographical Dictionaries." *Journal of the Economic and Social History of the Orient* 13 (1970): 195-211.
_____ . *The Patricians of Nishapur*. Cambridge, MA: Harvard University Press, 1972.

Butterworth, Charles E. "Ethics in Medieval Islamic Philosophy." *Journal of Religious Ethics* 11 (1983): 224-39.

Cahen, Claude. "The Historiography of the Seljuqid Period." In *Historians of the Middle East*, ed. B. Lewis and P. M. Holt, 59-78. London: Oxford University Press, 1962.

_____ . "The Turkish Invasion: the Selchukids." In *A History of the Crusades*, 4 vols. ed. K. M Setton, vol 1. 135-176. Philadelphia: University of Pennsylvania Press, 1955-62.

Chelhod, Joseph. "La Place de la Coutume dans le Fiqh Primitif et sa Permanence dans les Societes Arabes a Tradition Orale." *Studia Islamica* 64 (1986): 19-37.

Chellhot, Victor. "'al-Qisṭās al-Mustaqīm' et la Connaissance Rationelle chez Gazālī." *Bulletin d'Etudes Orientales* 15 (1955-57): 7-31.

Cohen, Hayyim J. "The Economic Background and the Secular Occupations of Muslim Jurisprudents and Traditionalists in the Classical Period of Islam (until the middle of the eleventh century)." *Journal of the Economic and Social History of the Orient* 13 (1970): 16-61.

Coulson, Noel J. *Conflicts and Tensions in Islamic Law*. Chicago: Chicago University Press, 1969.

Daftary, F. *The Ismāʿīlīs: Their History and Doctrines*. Cambridge: Cambridge University Press, 1990.

Darnton, Robert. *The Great Cat Massacre and Other Episodes in French Cultural History*. New York: Vintage Books, 1984.

Derrida, Jacques. *Of Grammatology*. Translated by Gayatri Chakravorty Spivak with translator's preface. Baltimore: The Johns Hopkins University Press, 1976.
_____. "Force of Law: The 'Mystical Foundation of Authority'." In *Deconstruction and the Possibility of Justice*, ed. Drucilla Cornell, Michel Rosenfeld and David Gray Carlson, 3-67. New York: Routledge, 1992.
_____. *Writing and Difference*. Translated and Introduced by Alan Bass. Chicago: The University of Chicago Press, 1978.

Diyab, Adib Nayif, "al-Ghazālī." In *Religion, Learning and Science in the Abbassid Period*, ed. M. J. L Young, J. D. Latham and R. B. Serjeant, 424-445. Cambridge: Cambridge University Press, 1990.

Douzinas, Costas. Ronnie Warrington, with Shuan McVeigh ed. *Postmodern Jurisprudence: The Law of Text in the Texts of Law*. London: Routlege, 1991.

Eco, Umberto. *Semiotics and the Philosophy of Language*. London: Macmillan, 1984.

van Ess, Joseph. "Skepticism in Islamic Religious Thought." In *God and Man in Contemporary Islamic Thought*, ed. Charles Malik, 83-98.

Fakhry, Majid. "The Synthesis: al-Ghazālī (d. 1111)." In *Ethical Theories in Islam*, 193-206. Leiden: E. J. Brill, 1991.

al-Fārūqī, Ismā'īl R. "The Self in Mu'tazilah Thought." *International Philosophical Quarterly*, 6 (1966): 366-88.

Firmage, Edwin B., Bernard G. Weiss, John W. Welch. *Religion and Law: Biblical-Judaic and Islamic Perspectives*. Winona Lake: Eisenbrauns, 1990.

Fischer, Michael M. J., and Mehdi Abedi. *Debating Muslims: Cultural Dialogues in Postmodernity and Tradition*. Madison: University of Wisconsin Press, 1990.

Foucault, Michel. *The Order of Things: An Archaeology of Human Sciences*. New York: Vintage Books, 1973.
_____. "Nietzsche, Genealogy, History." In *Language, Counter-Memory, Practice: Selected Essays and Interviews*. Edited with an Introduction by Donald F. Bouchard. Translated by Donald F. Bouchard and Sherry Simon. Oxford: Basil Blackwell, 1977.

Frank, Richard M. "Moral Obligation in Classical Muslim Theology." *Journal of Religious Ethics* 11 (1983): 204-223.
_____. *Al-Ghazālī and the Ash'arite School*. Durham: Duke University Press, 1994.

Gardet, Louis and M. M. Anawati. *Introduction a La Theologie Musulmane: Essai de Theologie Comparee*. Paris: Librairie Philosophique J. Vrin, 1948.

_____ . S.v. "Kalām." In *Encyclopaedia of Islam*. 2d ed. eds. E. van Donzel, B. Lewis and Ch. Pellat, 4:468-71. Leiden, E. J. Brill, 1990.

al-Ghazālī, Abu Hamid. *The Book of Knowledge, being a translation with notes of the Kitab al-ʿIlm of al-Ghazzālī's Iḥyā ʿUlūm al-Dīn*. Translated by Nabih Amin Faris, Lahore: Shaykh Muhammad Ashraf, 1970.
_____ . *Tahāfut al-Falāsifa* [*Incoherence of the Philosophers*]. Translated by Sabih Ahmad Kamali. Lahore: Pakistan Philosophical Congress, 1963.
_____ . *Ghazālī's Book of Counsel for Kings*. Translated by F. R. C. Bagley, London: Oxford University Press, 1971.

Gilbert, Joan E. "Institutionalization of Muslim Scholarship and Professionalization of the ʿUlamā' in Medieval Damascus." *Studia Islamica* 52 (1989): 105-134.

Gimaret, Daniel. "Un Document Majeur pour l'Histoire du Kalām: le Mugarrad Maqālāt al-Aṣʿarī d'Ibn Fūrak." *Arabica* 32 (1985): 185-218.

Goichon, A. M and H. Fleisch. S. v. "Ḥukm." In *Encyclopaedia of Islam*. 2d ed. eds. B. Lewis, V. L. Menage, Ch. Pellat and J. Schacht, 3:549-51. Leiden: E. J. Brillm 1986.

Goldziher, Ignaz. *Introduction to Islamic Theology and Law*. Translated by Andras and Ruth Hamori with an Introduction and additional notes by Bernard Lewis. Princeton: Princeton University Press, 1981.
_____ . and A. S. Tritton. S.v. *"Badā'."* In *Encyclopaedia of Islam*. 2d ed. eds. H. A. R. Gibb, J. H. Kramers, E. Levi-Provencal, J. Schacht, 1:850-1. Leiden: E. J. Brill, 1986.

Goodrich, Peter. *Reading the Law: A Critical Introduction to Legal Method and Techniques*. Oxford: Basil Blackwell, 1986.
_____ . *Legal Discourse*. New York: St. Martin's, 1987.
_____ . *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis*. London: Macmillan Press, 1987.
_____ . *Languages of Law: From Logics of Memory to Nomadic Masks*. London: Weidenfeld and Nicolson, 1990.

Halle, Morris, Ladislav Matejka, Krystyna Pomorska, Boris Uspenskij. *Semiosis: Semiotics and the History of Culture*. Ann Arbor: University of Michigan, 1984.

Hallaq, Wael, B. "Considerations on the Function and Character of Sunnī Legal Theory." *Journal of the American Oriental Society* 104 (1984): 679-689.
_____ . "Was the Gate of *Ijtihād* Closed"? *International Journal of Middle East Studies* 16 (1985): 3-41.
_____ . "On the Origins of the Controversy about the Existence of Mujtahids and the Gate of Ijtihad." *Studia Islamica* 63 (1986): 129-141
_____ . "On the Authoritativeness of Sunni Consensus." *International Journal of Middle East Studies* 18 (1986): 427-54.
_____ . "The Development of Logical Structure in Sunnī Legal Theory." *Der Islam* 64 (1987): 42-65.

_____. "Notes on the term *qarina* in Islamic Legal Discourse." *Journal of the American Oriental Society* 108 (1988): 475-480.
_____. "Non-Analogical Arguments in Sunni Juridical Qiyās." *Arabica* 36 (1989): 286-306.
_____. "Logic, Formal Arguments and Formalization of Arguments in Sunni Jurisprudence. *Arabica* 38 (November 1990): 315-58.
_____. "The Primacy of the Qur'ān in Shāṭibī's Legal Theory." In *Islamic Studies Presented to Charles J. Adams*, ed. Wael B. Hallaq and Donald P. Little, 69-90. Leiden: E. J. Brill, 1991.
_____. "*Uṣūl al-Fiqh* Beyond Tradition." *Journal of Islamic Studies* 3 (1992): 172-202.
_____. "From Fatwas to Furūᶜ: Growth and Change in Islamic Substantive Law." *Islamic Law and Society* 1 (April 1994): 29-65.

Wael Hallaq. Review of *The Search for God's Law*, by Bernard Weiss. In *International Journal of Middle East Studies* 26 (February 1994): 152-154.

Hammad, Aḥmad Zakī Manṣūr. "Abū Ḥāmid al-Ghazālī's Juristic Doctrine in *al-Mustaṣfā min ᶜilm al-uṣūl* with a translation of volume one of the *al-Mustaṣfā min ᶜilm al-uṣūl*." Ph.D. diss., University of Chicago, 1987.
_____. "Ghazālī's Juristic Treatment of Sharīᶜah Rules in *al-Mustaṣfā*." *American Journal of Islamic Social Sciences* 4 (1987): 159-177.

Hanafi, Hassan. *Les Methodes d'Exegese: Essai Sur la Science des Fondements de la Comprehension ᶜIlm Uṣūl al-Fiqh*. Le Caire: Le Conseil Superieur des Arts, des Lettres et des Sciences Sociales, 1385/1965.

Hassan, Hassan Ibrahim. "Judiciary System from the Rise of Islam to 567 A. H. (A. D 1171)." *Islamic Quarterly* 7 (1963): 23-30.

al-Haqq, Jalal. "al-Ghazālī on Causality, Induction and Miracles." *Al-Tawḥīd* 3 (Rajab-Ramadan 1406): 55-62.

Heer, Nicholas, "Abū Ḥāmid al-Ghazālī's Esoteric Exegesis of the Koran." In *Classical Persian Sufism: From Its Origins to Rumi*, ed. Leonard Lewisohn, 235-257. London: Khanqahi Nimatullahi Publications, 1993.

Hermansen, Marcia K. "Interdisciplinary Approaches to Islamic Biographical Materials." *Religion* 18 (1988): 163-82.

Hillenbrand, Carole. "Islamic Orthodoxy or Realpolitik? al-Ghazālī's Views on Government." *Iran* 26 (1988): 81-94.

Hodgson, Marshall G. S. *The Venture of Islam: Conscience and History in a World Civilization*, vol. 2. *The Expansion of Islam in the Middle Ages*. Chicago: University of Chicago Press, 1977.

Hourani, George F. "The Dialogue Between al-Ghazālī and the Philosophers on the Origin of the World." *Muslim World* 58 (July 1958): 183-191.
_____. "Ethical Presuppositions of the Qur'ān." *Muslim World* 70 (1980): 1-28.
_____. "A Revised Chronology of Ghazālī's Writings." *Journal of the American Oriental Society* 1104 (1984): 289-302.
_____. "Ghazālī on the Ethics of Action." In *Reason and Tradition in Islamic Ethics*, 135-66. London: Cambridge University Press, 1985.
_____. "Two Theories of Value in Early Islam." In *Reason and Tradition in Islamic Ethics*, 57-66. London: Cambridge University Press, 1985.

Houtsma, M. Th. "The Death of Niẓām al-Mulk and its Consequences." *Journal of Indian History* 3 (September 1924): 147-160.

Humphreys, R Stephen. *Islamic History:A Framework for Inquiry*. Minneapolis: Bibleotheca Islamica, 1988.

Jackson, Bernard. *Semiotics and Legal Theory*. London, Boston: Routledge and Kegan Paul, 1985.

_____. *Semiotics and Critical Legal Studies*. (Messina: Universita degli Studi di Messina, Facolta di Scienze Politiche, Working Papers di Sociologia, 1986.
_____. *Law, Fact and Narrative Coherence*. Merseyside: Deborah Charles Publications, 1988.

Jakobson, Roman. "Linguistics and Poetics." In *Selected Writings III*, ed. Stephen Rudy, 18-51. The Hague: Mouton Publishers, 1981.

Jameson, Frederick. *The Political Unconscious: Narrative as a Socially Symbolic Act*. (Ithaca:Cornell University Press, 1981.

Jabre, Farid. *Essai sur le lexique de Ghazali: Contribution a l'etude de la terminologie de Ghazali dans ses principaux ouvrages a l'exception du Tahafut*. Beirut: Publications de l'universite Libanaise, n.d.

Johansen, Baber. "Le Jugement Comme Preuve. Prevue Juridique et Verite Religieuse dan le Droit Islamique Hanefite." *Studia Islamica* 72 (1990): 5-17

de Jong, F. S.v. *"al-Ḳuṭb."* In *Encyclopaedia of Islam*. 2d eds. C. E. Bosworth, E. van Donzel, B. Lewis, and Ch. Pellat, 5: 543-46. Leiden, E. J. Brill, 1986.

Kamali, Mohammad Hashim. *Principles of Islamic Jurisprudence*. Cambridge: Islamic Texts Society, 1991.

Kelly, Donald R. "Hermes. Clio, Themis: Historical Interpretation and Legal Hermeneutics." *Journal of Modern History* 55 (1983): 644-668.

Kevelson, Roberta. *The Law as a System of Signs*. New York and London: The Plenum Press, 1988.

_____ . *Law and Semiotics*. New York and London: The Plenum Press, 1987-88.

Khadduri, Majid. *The Islamic Law of Nations: Shaybānī's Siyar*. Translated and Introduced by Majid Khadduri. Baltimore: The Johns Hopkins Press, 1966.
_____ . *al-Shāfi'ī's Risāla: Treatise on the Foundations of Islamic Jurisprudence*. Cambridge: Islamic Texts Society, 1987.

Kinberg, Leah. "The Legitimation of the Madhahib through dreams." *Arabica* 32 (1985): 47-79.

Kris, Ernst. *Psychoanalytic Explorations in Art*. New York: International Universities Press, 1952.

Lambton, A. K. S. *Theory and Practice in Medieval Persian Government*. London: Varorium Reprints, 1980.
_____ . "Quis Custodiet Custodes: Some Reflections on the Persian Theory of Government." *Studia Islamica*, 5 (1956): 125-148.
_____ . "Quis Custodiet Custodes: Some Reflections on the Persian Theory of Government." *Studia Islamica*. 6 (1956): 125-146.
_____ . "Justice in the Medieval Persian Theory of Kingship." *Studia Islamica*. 17 (1962): 91-119.
_____ . *Landlord and Peasant in Persia: a Study of Land Tenure and Land Revenue Administration*. 2d ed. London: Oxford University Press, 1969.
_____ . *State and Government in Medieval Islam: An Introduction to the Study of Islamic Political Theory: The Jurists*. London:Oxford University Press, 1981.
_____ . "Aspects of Saljūq-Ghuzz Settlement in Persia." In *Papers on Islamic History: Islamic Civilisation 950-1150*, ed. D. S. Richards, 105-125. Oxford: Cassirer, 1973.
_____ . *Continuity and Change in Medieval Persia: Aspects of Administrative, Economic and Social History, 11th-14th Century*. New York: Bibleotheca Persica, 1988.

Laoust, Henri. "Les Agitations Religieuses A Baghdad aux IV^{e} et V^{e} siecles de l'hegire." In *Papers on Islamic History: Islamic Civilisation 950-1150*, ed. D. S. Richards, 169-85. Oxford: Cassirer, 1973.
_____ . "La Pedagogie d'al-Ġazālī dans le Mustaṣfā." *Revue des Etudes Islamiques* 44 (1976-77): 71-79.
_____ . "Ṣāfī et le *Kalām* d'apres Rāzī." *Recherche d'Islamologie: Recueil d'articles offert a Georges Anawati et Louis Gardet par leurs collegues et amis*. Louvain et Louvain-La-Neuve, 1978.
_____ . *La Politique de Gazālī*. Paris: Librarie Orientaliste Paule Geuthner, n.d.

Landowski, Eric. "Towards a Semiotic and Narrative Approach to Law." *International Journal for the Semiotics of Law* 1 (1988): 79-1-105.

Lane, Edward William. *An Arabic-English Lexicon*. 2 vols. Cambridge: Islamic Text Society, 1984.

Law, Jules David. "Reading with Wittgenstein and Derrida." In *Redrawing the Lines: Analytic Philosophy, Deconstruction and Literary Theory*, ed. Reed Way Dasembrock, 140-168. Minneapolis: University of Minnesota Press, 1989.

Lazarus-Yafeh, Hava. "Some Notes on the term 'Taqlīd' in the Writings of al-Ghazzali." *Israel Oriental Studies* 1 (1971): 249-256.
_____. *Studies in al-Ghazzālī*. (Jerusalem: The Magnes Press, 1975.

Macdonald, Duncan . S.v. "al-Ghazzālī." In *Shorter Encyclopaedia of Islam*, eds. H. A. R. Gibb and J. H. Kramers, 111-114. Ithaca, Cornell University Press, 1953; reprint 1974.

Madelung. Wilferd. "The Sources of Ismāʿīlī Law." *Journal of Near Eastern Studies* 35 (1976): 20-40.

Madison, G. B. *The Hermeneutics of Postmodernity: Figures and Themes*. Bloomington: Indiana University Press, 1990.

Makdisi, George. "The Topography of Eleventh Century Bagdad: Materials and Notes (1)." *Arabica* 6 (1959): 178-97.
_____. "Muslim Institutions of Learning in Eleventh-Century Baghdad." *Bulletin of the School of Oriental and African Studies* 24 (1961): 1-56.
_____. "Law and Traditionalism in the Institutions of Learning." In *Theology and Law in Islam*, ed. G. E. von Grunebaum, 75-88. Wiesbaden, Otto Harrassowitz, 1971.
_____. *The Rise of Colléges: Institutions of Learning in Islam and the West*. Edinburgh: Edinburgh University Press, 1981.
_____. "The Sunni Revival in Islamic Civilization." In *Papers on Islamic History: Islamic Civilisation 950-1150*, 155-68. Oxford: Cassirer, 1973.
_____. "Ashʿarī and the Ashʿarites in Islamic Religious History (Part 1)." *Studia Islamica* 17 (1962): 37-80.
_____. "Ashʿarī and the Ashʿarites in Islamic Religious History (Part 2)." *Studia Islamica* 18 (1963): 19-39.
_____. "The Significance of the Sunnī Schools of Law in Islamic Religious History." *International Journal of Middle East Studies* 10 (1979): 1-8.
_____. "The Juridical Theology of Shafiʿī: Origins and Significance of *Uṣūl al-Fiqh*." *Studia Islamica* 59 (1984): 5-47.

Makdisi, John. "Islamic Law Bibliography." *Law Library Journal* 78 (1986): 103-89.

Mallat, Chibli. *The Renewal of Islamic Law: Muhammad Baqer as-Ṣadr, Najaf and the Shīʿī International*. London: Cambridge University Press, 1993.

de Man, Paul. *Allegories of Reading*. New Haven: Yale University Preess, 1979.
_____. "Resistance to Theory." *Yale French Studies* 63 (1982): 3-20.
_____. "The Rhetoric of Blindness: Jacques Derrida's Reading of Rousseau." In *Blindness and Insight: Essays in the Rhetoric of Contemporary Criticism*, 2d ed., revised print, 102-141. London: Routledge, 1989.

Marcais, G. S.v. *"Bustān."* In *Encyclopaedia of Islam*. 2d ed. eds. H. A. R. Gibb, J. H. Kramers, E. Levi-Provencal, J. Schacht, Leiden: E. J. Brill, 1986.

Marmura. Michael E. "The Logical Role of the Argument from the Time in the Tahafut's Second Proof for the World's Pre-Eternity." *Muslim World* 49 (October 1959): 306-14.

Martin, Richard C. "Islamic Textuality in Light of Poststructuralist Criticism." In *A Way Prepared: Essays on Islamic Culture in Honor of Richard Bayly Winder*, ed. Farhad Kazemi and R.D. McChesney, 116-31. New York: New York University Press, 1988.

Masud, Muhammad Khalid. *Islamic Legal Philosophy*. Islamabad: Islamic Research Institute, 1977.

_____. "Shaṭibī's Theory of Meaning." *Islamic Studies*, 32 (1993): 5-16.

McCarthy, Richard Joseph. *Freedom and Fulfillment: An Annotated Translation of al-Ghazālī's al-Munqidh min al-Ḍalāl and Other Relevant Works of al-Ghazālī*. Boston: Twayne Publishers, 1980.

Merrell, Floyd. *Sign Textuality, World*. Bloomington: Indiana University Press, 1992.

Messick, Brinkley. *The Calligraphic State: Textual Domination and History in a Muslim Society*. Berkley: University of California, 1992.

Mez, Adam, *The Renaissance of Islam*. Translated by Salahuddin Khuda Baksh and D. S. Margoliouth. London: Luzac & Co., 1937.

Modarressi, Hossein. "Some Recent Analyses of the Concept of majaz in Islamic Jurisprudence." *Journal of the American Oriental Society* 106 (1986): 787-791.

Montada, Josep Puig. "Ibn Rushd versus al-Ghazālī: Reconsideration of a Polemic." *Muslim World* 82 (1992): 113-131.

Moore, Sally, F. *Law as Process*. London: Routledge, 1978.

Moosa, Ebrahim. "Application of Muslim Personal and Family Law in South Africa: Law, Ideology and Socio-Political Implications." M.A. diss., University of Cape Town, 1988.

Nanji, Azim. "Between Metaphor and Context: The Nature of the Fatimid Ismā'īlī Discourse on Justice and Injustice." Arabica 37, (1990): 234-39.

Nizam al-Mulk. *The Book of Government or Rules for Kings*. Translated by Hubert Darke. 2d ed. Routledge & Kegan Paul, 1978.

Nietzsche, Friedrich. "On Truth and Falsity in their Ultramoral Sense." In *Early Greek Philosophy and Other Essays*, 113-192. Translated by Maximilian A. Mugge. London: T.N. Foulis, 1911.

Norris, Christopher. "The Rhetoric of Remembrance: Derrida on de Man." *Textual Practice* 1 (1987): 154-167.
_____. "Deconstruction, Post-Modernism and the Visual Arts." In *What is Deconstruction*, 7-31. London: Academy Editions, 1988.
_____. "Law, Deconstruction, and the Resistance to Theory." *Journal of Law and Society*, 15 (1988): 166-187.
_____. "Against a New Pragmatism: Law, Deconstruction and the Interests of Theory." In *Paul de Man: Deconstruction and the Critique of Aesthetic Ideology*, 125-148. Routledge: New York, 1988.

Obeyesekere, Ganath. *The Work of Culture*. Chicago: The University of Chicago Press, 1990.

Ormsby, Eric L. *Theodicy in Islamic Thought: The Dispute over al-Ghazali's "Best of all possible worlds."* Princeton: Princeton University press, 1984.
_____. "The Taste of Truth: The Structure of Experience in al-Ghazali's *al-Munqidh min al-Dalal*." *In Islamic Studies Presented to Charles J. Adams*, ed. Wael B. Hallaq and Dinald Little, 133-52. Leiden: E. J. Brill, 1991.

Powers, David, S. *Studies in Qur'ān and Ḥadīth: The Formation of the Islamic Law of Inheritance*. Berkeley: University of California Press, 1986.

Rahman, Fazlur. *Islamic Methodology in History*. Islamabad: Islamic Research Institute, 1965, reprint 1984.
_____. "Functional Interdependence of Law and Theology." In *Theology and Law in Islam*, ed. G. E. von Grunebaum, 89-97 Wiesbaden: Otto Harrassowitz, 1971.
_____. "Law and Ethics in Islam." In *Ethics in Islam*. Ninth Giorgio Levi Della Vida Biennial Conference, ed. Richard G. Hovannisian, 3-15. Malibu: Undena Publications, 1985.
_____. *Islam*. 2d ed. Chicago: University of Chicago Press, 1966 (1979).

Rammuny, Raji M. "Al-Jurjānī: A pioneer of Grammatical and Linguistic Studies." *Historiographia Linguistica*, 12, (1985): 351-371.

Reinhart, Kevin. "Islamic Law as Islamic Ethics." *Journal of Religious Ethics* 11 (1983): 186-203.
_____. "Before Revelation: The Boundaries of Muslim Moral Knowledge." Ph.D. diss., Harvard University, 1986.

Reynolds, Frank. E. and Donald Capps. *The Biographical Process: Studies in the History and Psychology of Religion*, ed. Frank E. Reynolds and Donald Capps. The Hague & Paris: Mouton, 1976.

Rose, Gilian. *Dialectic of Nihilism: Post-Structuralism and Law*. Oxford: Basil Blackwell, 1984.

Rosen, L. *The Anthropology of Justice: Law as Culture in Islamic Society*. Cambridge: Cambridge University Press, 1989.

Rosenthal, Frantz. S.v. *"Dawla."* In *Encyclopaedia of Islam*. 2d ed. eds. B. Lewis, Ch. Pellat and J. Schacht, 2:177-78. Leiden: E. J. Brill, 1983.

Ricoeur, Paul. *The Rule of Metaphor*. Translated by R. Czerny et al. Toronto & Buffalo: University of Toronto Press, 1977.

Sachedina, Abdulaziz A. "Unity through diversity: The Sharī Vision." *American Journal of Islamic Social Sciences*. 5 (1988): 59-75.

Salame, David Doumit Abdoo. "Faith and Reason in the Islamic Tradition and Particularly in Ghazali." Ph. D. diss., Saint Louis University, 1988.

Salamini, Leonardo. "Gramsci and Marxist Sociology of Language." *International Journal of Sociology of Language* 32 (1981): 27-44.

de Santillana, David. "Law and Society." In *The Legacy of Islam*, ed. Thomas Arnold and Alfred Guillaume, 284-310. Oxford: Clarendon Press, 1931.

Sarup, Madan. *An Introductory Guide to Post-Structuralism and Postmodernism*. 2d ed. New York: Harvester Wheatsheaf, 1988 (1993).

Schauer, Frederick. ed. *Law and Language*. The International Library of Essays in Law and Legal Theory. Aldershot, Eng: Dartmouth Publishing Company, 1993.

Schacht, Joseph. *An Introduction to Islamic Law*. Oxford: Clarendon Press, 1964 (1982).
_____ . *The Origins of Muhammadan Jurisprudence*. Oxford: Clarendon Press, 1950 (1979).
_____ . "Theology and Law in Islam." In *Theology and Law in Islam*, ed. G. E. von Grunebaum, 3-23. Wiesbaden: Otto Harrassowitz, 1971.
_____ . S. v. *"Ahkam."* In *Encyclopaedia of Islam*. 2d ed. eds. H. A. R. Gibb, J. H. Kramers, E. Levi-Provencal and J. Schacht, 1:257. Leiden: E. J. Brill, 1986.

Schreiner, Martin. "Zur Geschichte des Asʿaritenthums." *Actes du Huitieme Congres International des Orientalistes* (1893): 79-117.

Sezgin, Fuat. *Geschichte des Arabischen Schrifttums*, 5 vols. Leiden: E. J. Brill, 1967-1978.

Shafaq, S. R. "Some Abiding Teachings of al-Ghazālī." *Muslim World* 44, (1954): 43-48.

Shehaby, Nabil. The Influence of Stoic Logic on al-Jassās's Legal Theory." In *The Cultural Context of Medieval Learning*, ed. Murdoch, John Emery and Edith Dudley Sylla, 61-85. Dordrecht: D. Reidel Publishing Company, 1975.
_____ . *"ʿIlla* and *Qiyās* in Early Islamic Legal Theory." *Journal of the American Oriental Society*, 102 (1982): 27-46.

Shehadi, Fadlou. *Ghazali's Unique Unknowable God: A Philosophical Critical Analysis of Some of the Problems Raised by Ghazālī's View of God as Utterly Unique and Unknowable*. Leiden: E. J. Brill, 1964.

Fadlou Shehadi. Review of *Freedom and Fulfillment: An Annotated Translation of al-Ghazali's 'al-Munqidh min al-Ḍalāl' and Other Relevant Works of al-Ghazali*, by Richard Joseph McCarthy. In *Journal of the American Oriental Society* 102 (1982): 374-76.

Shimizu, Kosuke. *Bibliography on Saljūq Studies*. Tokyo: Institute for the Study of Languages and Cultures of Asia and Africa, 1979.

Sinaceur, M. A. "al-Ghazali er L'Ironie de Malebranche sur Averroes." Arabica 34 (march 1987): 287-304.

Singer, Joseph William. "The Player and the Cards: Nihilism and Legal Theory." Yale Law Journal 94 (1984): 1-70.

Singh, Jaspal. "Problematics and Perspectives." In *Semiosis and Semiotics: Explorations in the Theory of Signs*, ed. Jaspal Singh, 11-28. Chandigarh: Lokayat Prakashan, 1982.

Spellberg, Denise. "Niẓām al-Mulk's manipulation of Tradition: ʿĀ'isha and the Role of Women in the Islamic Government." *Muslim World* 78 (April 1988): 111-17.

Spuler, Bertold. *The Muslim World: A Historical Survey: The Age of the Caliphs*. Translated by F. R. C. Bagley, Leiden: E. J. Brill, 1960.

Stern, M. S. "Notes on the Theology of al-Ghazzālī's Concept of Repentance." *Islamic Quarterly* 23 (1979): 82-98.

Toews, John E. "Intellectual History after the Linguistic Turn: The Autonomy of Meaning and the Irreducibility of Experience." *American Historical Review* 93 (1987): 879-907.

Turner, Victor. "Pilgrimages as Social Processes." In *Dramas, Fields and Metaphors: Symbolic Action in Human Society*, 166-230. Ithaca: Cornell University Press, 1974.
_____ ."Religious Paradigms and Political Action: The Murder in the Cathedral of Thomas Becket." In *The Biographical Process: Studies in the History and Psychology of Religion*, ed. Frank E. Reynolds and Donald Capps, 153-186. The Hague & Paris: Mouton, 1976.

Villey, M. "Preface." Symposium on Le Langage du Droit. *Archives de Philosophie du Droit*, 19 (1974): 1-5.

Watt, W. Montgomery. "The Authenticity of the Works Attributed to al-Ghazālī." *Journal of the Royal Asiatic Society* (April 1952): 24-45.
_____ . "The Study of al-Gazālī." *Oriens* 13-14 (1961): 121-31.

Weiss, Bernard. "Language and Tradition in Medieval Islam: The question of *al-Tarīq Ila Marifat al-Lugha*." *Der Islam*, 61 (1984): 91-99.
_____. "Knowledge of the Past: The Theory of *Tawātur* According to Ghazali." *Studia Islamica* 61 (1985): 81-105.
_____. "Exoterism and Objectivity." In *Islamic Law and Jurisprudence*, ed. Nicholas Heer, 53-71. Seattle & London: University of Washington Press, 1990.
_____. "Law in Islam and the West: Some Comparative Observations. In *Islamic Studies Presented to Charles C. Adams*, ed. Wael B Hallaq, and Donald P. Little, 239-253. Leiden: E. J. Brill, 1991.
_____. *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī*. Salt Lake City: University of Utah Press, 1992.

Wensinck, A. J. *La Pensee de Ghazzālī*. Paris: Adrien-Maisonneuve, 1940.
_____. and J. H. Kramers, "al-Ghazzālī." In *Handworterbuch des Islam*, 140-44. Leiden: E. J. Brill, 1941.

Williams, Glanville L. "Language and the Law (1)." *Law Quarterly Review* 61 (January 1945): 71-86
_____. "Language and the Law (2)." *Law Quarterly Review* 61 (April 1945): 179-195.
_____. "Language and the Law (3)." *Law Quarterly Review* 61 (July 1945): 293-303.
_____. "Language and the Law (4)." *Law Quarterly Review* 61 (October 1945): 384-406.
_____. "Language and the Law (5)." *Law Quarterly Review* 62 (October 1946): 387-406.

Winquist, Charles E., and John d. Caputo. "Derrida and the Study of Religion." *Religious Studies Review* 16 (1990): 19-25.

Woods, Roger. "Discourse Analysis: the Work of Michel Pecheux." *Ideology and Consciousness* no. 2 (1977): 57-79.

Wright, George. "On a General Theory of Interpretation: The Betti-Gadamer Dispute in Legal Hermeneutics." *The American Journal of Jurisprudence* (1987): 191-243.

Zadra, Dario. "Victor Turner's Theory of Religion: Towards an Analysis of Symbolic Time." In *Anthropology and the Study of Religion*, ed. Robert L. Moore and Frank E. Reynolds, 77-104. Chicago: Center for the Scientific Study of Religion, 1984.

Arabic and non European Languages

ʿAbd al-Jalīl, al-Munṣif. "al-Manhaj al-Antrobologī fī Dirāsa Maṣādir al-Fikr al-Islāmī al-Ūlā." *al-Fikr al-ʿArabī al-Muʿāṣir* no. 68-69 (1989): 32-43.

Abū Zahra, Muḥammad. "al-Ghazālī al-Faqīh." In *Abū Ḥāmid al-Ghazālī fī al-Dhikrā al-Mi'awiyya al-Tāsiʿa li Milādihī*, ed. Zakī Najīb Maḥfūz. Cairo: al-Majlis al-Aʿlā li Riʿāyat al-Funūn wa al-Adāb wa al-ʿUlūm al-Ijtimāʿiyya, 1962).

_____. *Usul al-Fiqh*. Cairo: Dār al-Fikr al-ᶜArabī, n.d..
_____. *Ta'rīkh al-Jadal*. Cairo: *Dār al-Fikr al-ᶜArabī*, 1934.

Abū Zayd, Naṣr Ḥāmid. *Mafhūm al-Naṣṣ: Dirāsa fī ᶜUlūm al-Qur'ān*. Cairo: al-Hay'at al-Miṣriyya al-ᶜĀmma li al-Kitāb, 1990).
_____. *al-Imām al-Shāfiᶜī wa Ta'sīs al-Idiyologī al-Wāsiṭiyya*. Cairo: Sīna li al-Nashr, 1992.
_____. "Markabat 'al-majāz': man yaquduha? wa ila ayna?." *Alif: Majallat al-Balāgha al-Muqārana* (*Alif: Journal of Comparative Poetics*) 12 (1992): 50-74.
_____. *al-Ittijāh al-ᶜAqlī fī al-Tafsīr: Dirāsa fī Qadiyat al-Majāz fī al-Qur'ān ᶜinda al-Muᶜtazila*. 3d ed. Beirut: Dār al-Tanwīr li al-Ṭibaᶜatī wa al-Nashr, 1993.

Adunīs (ʿAlī Aḥmad Saʿīd). *al-Thābit wa-al-mutaḥawwil*. Beirut: Dār al-ʿAwda, 1974.

ᶜAfīfī, Abū al-ᶜAlā. "Athar al-Ghazālī fī Tawjih al-Ḥāyat al-ᶜAqliyya wa al-Rūḥiyya fi al-Islām." In *Abū Ḥāmid al-Ghazālī fī al-Dhikrā al-Mi'awiyya al-Tāsiᶜa li Milādihī*, ed. Zakī Najīb Maḥfūz, 735-751. Cairo: al-Majlis al-Aᶜlā li Riᶜāyati al-Funūn wa al-Ādāb wa al-ᶜUlūm al-Ijtimāᶜiyya, 1382/1962.

al-ᶜAjam, Rafīq. *al-Manṭiq ᶜinda al-Ghazālī fī Abᶜādihī al-Arastuwiyya wa Khuṣuṣiyyātihī al-Islāmiyya*. Beirut: Dār al-Mashriq, 1989.

al-Āmidī, Sayf al-Dīn Abū al-Ḥasan b. Abī ᶜAlī b. Muḥammad. *al-Iḥkām fī Uṣūl al-Aḥkām*. 2 vols. Cairo: Mu'assasa al-Ḥalabī wa Shuraka'uhū li al-Nashr wa al-Tawzīᶜ, 1387/1967.

al-Anṣārī, ᶜAbd al-ᶜAlī Muḥammad b. Niẓām al-Dīn. *Fawātiḥ al-Rahmūt bi-Sharḥ Musallam al-Thubūt*. 2d. ed. 2 vols. Cairo: Bulāq, 1322 AH. Reprinted together with al-Ghazālī's *al-Mustaṣfā*, 1403/1983.

al-Anṣārī, ᶜAbd al-Dā'im Abū al-ᶜAṭā al-Baqrī. *I'tirāfāt al-Ghazālī: Kayfa Arrakha al-Ghazālī Nafsahū*. Cairo: Maktabat al-Angelo al-Miṣriyya, 1975.

ᶜAzzām, Idrīs. "al-Sulṭa al-Siyāsīyya wa Waẓīfatuhā al-Ijtimāᶜiyya: Qirā'a Jadīda li Baᶜḍi Jawānib al-Fikr al-Siyāsī li Ḥujjat al-Islām Abī Ḥāmid al-Ghazālī. *Majallat al-ᶜUlūm al-Ijtimāᶜiyya* 14 (Winter 1987): 15-38.

Badawī, ᶜAbd al-Raḥmān. *Mu'allafāt al-Ghazālī*, 2d ed. Kuwait: Wakālat al-Maṭbūᶜāt, 1977.

al-Badakhshī, Muḥammad b. al-Ḥasan. *Manāhij al-ᶜUqūl*. 3 vols. Beirut: Dār al-Kutub al-ᶜIlmiyya, 1405/1984, printed with *Nihāyat as-Su'l*.

Bin ᶜAbd al-ᶜAlī, ᶜAbd al-Salām. "al-Maᶜrifa wa al-Sulṭaᶜinda al-Ghazālī: *al-Munqidh min al-Ḍalāl*." *al-Fikr al-ᶜArabī* no. 41 (1986): 17-20.

Bin ᶜArnūs, Maḥmūd bin Muḥammad. *Ta'rīkh al-Qaḍā fī al-Islām*. Cairo: Maktabat al-Kulliyyāt al-Azahriyya, n.d.

al-Bukhārī, ʿAlā al-Dīn ʿAbd al-ʿAzīz b. Aḥmad. Kashf al-Asrār. 2 vols. Beirut: Dār al-Kutub al-ʿArabī, 1394/1974. Reprint.

al-Darīnī, Muḥammad Fatḥī. "al-Fikr al-Siyasī ʿinda al-Ghazālī, wa al-Māwardī wa Ibn Khaldūn." *al-Turāth al-ʿArabī*, no. 22, (1986): 23-67.

al-Dhahabī, Shams al-Dīn Muḥammad b. Aḥmad b. ʿUthmān. *Siyar Aʿlām al-Nubalā*, 25 vols. ed. Shuʿayb al-Arna'ūṭ. Beirut: Mu'assasa al-Risālā, 1405/1984.

Dunyā, Sulaymān. *al-Haqīqa fī Naẓar al-Ghazālī*. Cairo: Dār al-Maʿārif, 1965.

Farrukh, ʿUmar. *Ta'rīkh al-Fikr al-ʿArabī ila Ayyām Ibn Khaldūn*. Beirut: Dār al-ʿIlm li al-Milayīn, 1983.

al-Fāsī, Muḥammad b. Ḥasan al-Hujawī al-Thaʿalabī. *al-Fikr al-Sāmī fī Ta'rīkh al-fiqh al-Islāmī*, ed. ʿAbd al-ʿAzīz b. ʿAbd al-Fattāḥ al-Qārī. 2 vols. Cairo: Maktaba Dār al-Turāth, 1397 AH.

al-Ghazālī, Abū Ḥāmid. *al-Mankhūl min Taʿliqāt al-Uṣūl*, ed. Muḥammad Ḥasan Haytu. Damascus: Dār al-Fikr, 1400/1980.

_____ . *al-Wasīṭ fī al-Madhhab*, ed. ʿAlī Muḥyī al-Dīn ʿAlī al-Qurra Dāghī. 2 vols. n.p.: Dār al-Naṣr li'l Ṭibāʿa al-Islāmiyya, 1404/1984.

_____ . *Mizān al-ʿAmal*. Cairo: Maktabat al-Jundī, n.d.

_____ . "Iljām al-ʿAwām ʿan ʿIlm al-Kalām." In *Majmūʿa Rasā'il Imām al-Ghazālī*, 4: 60-120. Beirut: Dār al-Kutub al-ʿIlmiyya, 1406/1986.

_____ . *al-Mankhūl min Taʿlīqāt al-Uṣūl*. ed. M. Haytu. Damascus: Dār al-Fikr, 1980/1400.

_____ . *al-Mustaṣfā fi ʿIlm al-Uṣūl*. 2 vols. Cairo: Bulāq 1322 AH. Reprinted with *Fawātiḥ al-Raḥmūt*, 1403/1983.

_____ . Iḥyā ʿUlūm al-Dīn. 5 vols. 2d ed. Beirut: Dār al-Fikr, 1409/1988.

Ḥanafī, Ḥasan , "ʿIlm Uṣūl al-Fiqh." In *Dirāsāt Islāmiyya*, 69-103. Cairo: Maktaba al-Angelo Miṣriyya, n.d..

Ibn al-Jawzī, Abū al-Faraj ʿAbd al-Raḥmān. *al-Muntaẓam fī Ta'rīkh al-Mulūk wa al-Umam*. 6 vols. Beirut: Dār Ṣādir, n.d.

Ibn Khallikān, Abū al-ʿAbbās Shams al-Dīn Aḥmad b. Muḥammad b. Abī Bakr. *Wafayat al-Aʿyan wa Anbā'Abnā' al-Zamān*. 8 vols. ed. Iḥsān ʿAbbās. Beirut: Dār Ṣādir, n.d.

al-Isnawī, Jamāl al-Dīn ʿAbd al-Raḥīm. *Nihāyat-al Su'l*. 3 vols. Beirut: Dār al-Kutub al-ʿIlmiyya, 1405/1984.

Ibn Khaldūn, ʿAbd al-Raḥmān b. Muḥammad. *Muqaddima Ibn Khaldūn*. Beirut: Dār al-Jīl, n.d.

Ibn Rushd, Abū al-Walīd Muḥammad al-Ḥafīd. *al-Ḍarūrī fī Uṣūl al-Fiqh aw Mukhtaṣar al-Mustaṣfā*, ed. Jamāl al-Dīn al-ʿAlawī. Beirut: Dār al-Gharb al-Islāmī, 1994.

Jawād, Muṣṭafā. "ᶜAṣr al-Imām al-Ghazālī." *al-Turāth al-ᶜArabī*, no. 22 (1986): 109-119.

al-Juwaynī, Abū al-Maᶜālī ᶜAbd al-Malik b. ᶜAbd Allāh. *al-Kāfiya fī al-Jadal*, ed. Fawqiyya Ḥusayn Maḥmūd. Cairo: ᶜIsa Bābi al-Ḥalabī, 1399/1979.

_____. *al-Burhān fī Uṣūl al-Fiqh*. 2 vols. ed. ᶜAbd al-ᶜAẓīm Maḥmūd al-Dīb. Manṣūra: Dār al-Wafā' li al-Ṭabāᶜti wa al-Nashr, 1412/1992.

Jalabī (Chelebi), Kātib (Ḥājī Khalīfa). *Kashf al-Ẓunūn ᶜan Asāmī al-Kutub waal-Funūn*, ed. Muḥammad Sharaf al-Dīn Yaltaqāyā, Wakālat al-Maᶜārif al-Jalīla, 1360/1941.

Khallāf, ᶜAbd al-Wahhāb. *ᶜIlm Uṣūl al-Fiqh*. 4th ed: Beirut: Dār al-ᶜIlm, 1401/1981.

al-Kutubī, Muḥammad b. Shākir. Fawāt al-Wafayāt. 5. vols. ed. Iḥsān ᶜAbbās. Beirut; Dār Ṣādir, n.d.

Mensia, Mokdad. "Bayna al-Ghazālī wa Ibn ᶜArabī." *(IBLA) Revue de l'Institut des Belles Lettres Arabes* no 160 (1987): 319-37.

al-Mays, Khalīl. ed. "Muqaddima. " In *al-Muᶜtamad fī Uṣūl al-Fiqh*. 2 vols. Beirut: Dār al-Kutub al-ᶜIlmiyya, n.d.

Mubārak, Aḥmad. "al-Iṭār al-Ta'rīkhī li Nash'atī al-Fikr al-Falsafī ᶜinda al-ᶜArab min Khilāl Qirā'a Jadīda." *al-Turāth al-ᶜArabī* no. 35-36 (1989): 75-96.

Mubārak, Zakī. *al-Akhlāq ᶜinda al-Ghazālī*. Beirut: Dār al-Jīl, 1408/1988.

al-Muqaddasī, Ibn Qudāma. *Taḥrīm an-Naẓar fī Kutub Ahl al-Kalām*. Translated by Makdisi as *Ibn Qudāmā's Censure of Speculative Theology*. London: 1962.

al-Nashshār, ᶜAlī Sāmī. *Manāhij al-Baḥth ᶜinda Mufakkirī al-Islām wa Naqd al-Muslimīn li al-Manṭiq al-Aristaṭālīsī*. Cairo: Dār al-Fikr al-ᶜArabī, 1367/1947.

Nuᶜmānī, Shiblī. *al-Ghazzālī* (Urdu). Delhi, Rangin Press, 1923.

al-Qarāfī, Shihāb al-Dīn Abū al-ᶜAbbās Aḥmad b. Idrīs b. ᶜAbd al-Raḥmān al-Sanhājī. *al-Furūq*. 2 vols. Beirut: ᶜĀlam al-Kutub, n.d.

al-Qarḍāwī, Yūsuf. *al-Imām al-Ghazālī Bayna Madihīhi wa Nāqidīhi*. Manṣūra, Egypt: Dār al-Wafā, 408/1988.

al-Rāzī, Fakhr al-Dīn Muḥammad b. ᶜUmar b. al-Ḥusayn, *al-Maḥsūl fī ᶜIlm Uṣūl al-Fiqh*. 2 vols. Beirut: Dār al-Kutub al-ᶜIlmiyya 1408/1988.

al-Sāᶜatī, Ḥasan. "al-Manhaj al-Waḍᶜī ᶜinda al-Imām al-Ghazālī." In *Abū Ḥāmid al-Ghazālī fī al-Dhikrā al-Mi'awiyya al-Tāsiᶜa li Milādihī*, ed. Zakī Najīb Maḥfūz, 433-448. Cairo: al-Majlis al-Aᶜlā li Riᶜāyati al-Funūn wa al-Adāb wa al-ᶜUlūm al-Ijtimāᶜiyya, 1382/1962.

al-Ṣadr, Muḥammad Bāqir. *al-Maʿālim al-Jadīda li al-Uṣūl*. Beirut: Dār al-Taʿāruf li al-Matbūʿāt, 1401/1981.

al-Ṣafadī, Ṣalāḥ al-Dīn Khalīl b. Aybak. *al-Wāfī bi al-Wafayāt*. 19 vols. Bibleotheca Islamica series, ed. Hellmut Ritter. Wiesbaden: Franz Steiner Verslag GMBH, 1981.

al-Shāfiʿī, Muḥammad b. Idrīs. *al-Risāla*, ed. Aḥmad Muḥammad Shākir. Cairo: Dār al-Turāth, 1399/1979.

al-Shahristānī, Muḥammad b. ʿAbd al-Karīm b. Abī Bakr Aḥmad. *al-Milal wa al-Niḥal*. ed. Muḥammad Sayyid Kīlānī. Beirut: Dār al-Maʿrifa, 1404/1984.

Shaḥrūr, Muḥammad. *al-Kitāb wa/al-Qur'ān: Qirā'a Muʿāṣira*. Cairo: Sīna li al-Nashr, 1992.

Shams al-Dīn, Aḥmad. ed. "Muqaddima." In *Mujmūʿa Rasā'il al-Imām al-Ghazālī*, 7:3-22. 7 vols. Beirut: Dār al-Kutub al-ʿIlmiyya, 1988/1409.

al-Shaṭibī, Abū Isḥāq. *al-Muwāfaqāt*. 4 vols. Beirut: Dār al-Maʿrifa, n.d.

al-Subkī, Tāj al-Dīn. *Ṭabaqāt al-Shāfiʿiyya al-Kubrā*, ed. al-Tanāḥī, Maḥmūd Muḥammad and ʿAbd al-Fattāḥ Muḥammad al-Ḥulwu. Cairo: Dar Ihya al-Kutub al-ʿArabiyya, n.d.

al-Ṭabarī, Abū Jaʿfar Muḥammad Ibn Jarīr. *Tārīkh al-Rusul wa al-Mulūk*, 8 vols. Beirut: Mu'assasa al-Āʿlamiyu li al-Maṭbūʿāt, n.d.

Tāmir, ʿĀrif. *al-Ghazālī Bayna al-Falsafa wa al-Dīn*. London: Riad el-Rayyes Books, 1987.

Thāmir, Fāḍil. "Min Sulṭat al-Naṣṣ ila Sulṭat al-Qirā'a." *al-Fikr al-ʿArabī al-Muʿāṣir* No. 48-49 (1988): 89-100.

al-Yāfī, ʿAbd al-Karīm. "Sīrat al-Imām Abī Ḥāmid al-Ghazālī wa Makānatuhū." *al-Turāth al-ʿArabī*, no. 22 (Jamād al-Ūla 1406/January 1986): 7-32.

al-Zabīdī, al-Sayyid Muḥammad b. Muḥammad al-Ḥusaynī. *Ithāf Sādāt al-Muttaqīn*. (n.p., n.d.).

Ẓāhir, Rifqī. *Qaḍiyat al-Takfīr ʿinda al-Ghazālī*. n.p.. n.d.

al-Zuḥaylī, Muḥammad. "al-Ghazālī al-Faqih wa Kitābuhu al-Wajīz." *al-Turāth al-ʿArabī*, no. 22 (1986): 79-108.